No. 92-739

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1992

In Re J. NEVIN WHITE,

Petitioner,

against

GEORGE E. HOFFER, A Judge of the Court of Common Pleas for the Commonwealth of Pennsylvania,

Respondent.

PETITION FOR AN EXTRAORDINARY WRIT OF MANDAMUS TO THE COURT OF COMMON PLEAS, CUMBERLAND COUNTY, PENNSYLVANIA

Petition for an Extraordinary Writ of Mandamus

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(2474—LC7-475—1992)

Questions Presented

1. Did the Respondent act within the jurisdiction of the Order of Judge Tamilia of the Superior Court of the Commonwealth of Pennsylvania, when the aforementioned court vacated the Respondent's Order for equitable distribution, dated April 6, 1988, citing *". . . such distribution must be made with tax consequences in mind. . ."*?

2. Was the Petitioner in willful contempt of the Respondent's Order of May 8, 1992, since the Respondent had acted *ultra vires* in the rendering of all orders purportedly pursuant to the Remand Order by Judge Tamilia?

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992.

IN RE J. NEVIN WHITE,

Petitioner,

against

GEORGE E. HOFFER, A Judge of the Court of Common Pleas for the Commonwealth of Pennsylvania,

Respondent.

PETITION FOR AN EXTRAORDINARY WRIT OF MANDAMUS TO THE COURT OF COMMON PLEAS, CUMBERLAND COUNTY, PENNSYLVANIA

Petition for an Extraordinary Writ of Mandamus

Statement of Jurisdiction

Petitioner petitions this Honorable Court having been denied appeal and judicial review by the State appellate courts from an interlocutory Order. The making and execution of the said Order by the Respondent amounts to a clear abuse of

discretion and judicial usurpation of power. Petitioner has no other adequate specific legal means or recourse to obtain relief.*

This petition is made pursuant to Article 3, Section 2, Clause 2 of the United States Constitution**, Volume 28 U.S.C. 1965(a) (All Writs Act)*** and Rule 20 of the Rules of the United States Supreme Court.

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*_United States ex rel Crawford v. Addison_, 22 How 12
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Hartman v. Greenhow, 102 U.S. 672, 26 L.Ed 271
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Erie Bank v. United States District Court (1966, CA 10 Colo) 362 F.2d 539

**See Treatise on Constitutional Law—Substance and Procedure, Second Edition, by Ronald D. Rotunda and John E. Novak, Volume 1 at Paragraph 1.6, 'Notes on Review of State Law".
Martin v. Humle's Lessee, 14 U.S. (1. Wheat) 304, 4 L.Ed 97 (1816).

***_See Ward Baking Co. v. Holtzoff_, (1947, CA 2, NY) 164 F. 2d 34, 13 CCH LC para 64102.
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United States v. Grand Jury and Henry M. Huffman, President, H & M Construction Company, (1975, CA.5 Fla) 425 F.2d 327.

Procedural History and Supporting Background

On December 24, 1981, Willa E. White filed a Complaint in Divorce, pursuant to 23 P.S. § 201(d) of the Divorce Code of the Commonwealth of Pennsylvania, against this Petitioner (her husband) in the Court of Common Pleas, Carlisle, Cumberland County, Pennsylvania, designated as "Case No. 4730 Civil 1981— Divorce".

Eleven hearings were held before a Master during 1985 to resolve equitable distribution, alimony pendente lite, alimony, counsel fees and costs. The report of the said Master was accepted by the Respondent after timely-made exceptions were considered by the court.

Accordingly, on April 6, 1988, Judge George E. Hoffer issued an Order for equitable distribution. (Appendix "A")

On May 23, 1988, Petitioner filed Notice of Appeal to the said Order for equitable distribution to the Superior Court for the Commonwealth of Pennsylvania. Subsequent to oral argument, Judge Tamilia filed the Judgment and Order of the said Superior Court on February 24, 1989. (Appendix "B")

Mrs. White, through her counsel, appealed the Order of the said Superior Court to the Supreme Court of Pennsylvania. This appeal was denied on September 25, 1989. (Appendix "C")

Purportedly, pursuant to the orders of the Superior and Supreme Courts of the Commonwealth of Pennsylvania (as aforementioned in Appendices "B" & "C" above), the

Respondent conducted a hearing which he described as "an interlocutary pretrial hearing". (Appendix "D")

The aforementioned hearing was held on February 9, 1990, wherein the court was told by counsel for Mrs. White that the divorce decree was not final (Appendix "D", Page 9, Line 17 to Page 10, Line 21). Thereafter Respondent refused to consider any matters with regard to his jurisdiction, arising out of the Order of Remand or the existence of a valid Decree Absolute in the divorce. (Appendix "D", Page 16, Line 10 to Page 17, Line 17).

Further purported remand hearings were held by Respondent on August 22 and August 24, 1990, having denied unto Petitioner all applications for discovery.

On August 24, 1990 Judge Hoffer issued an Order for equitable distribution (tax consequences), which was filed on September 6, 1990 (Appendix "E") requiring J. Nevin White (Petitioner herein) to post with the court a cash bond of $50,000.00 no later than September 7, 1990.

On August 30, 1990, counsel for Mrs. White filed with the Court of Common Pleas a Petition For Special Relief (Appendix "F") and Respondent accordingly issued the requested Order. (Appendix "G")

In granting the Petition For Special Relief filed by counsel for Mrs. White, Respondent issued an Order on September 5, 1990, which was not filed until September 11, 1990 (Appendix "H").

On petition of Mrs. White, Judge Hoffer issued a Show Cause Order on September 13, 1990, returnable on September 27 authorizing the Sheriff of Cumberland County or such other person duly deputized to bring Petitioner before Respondent's court for him to show cause why he should not be held in contempt (Appendix "I").

In response to the aforementioned Show Cause Order, Petitioner posted a cash bond of $50,000.00 with the court on October 24, 1990, in compliance with the court's Order of September 5, 1990.

Counsel for Petitioner, on September 18, 1990 filed Notice of Appeal of Respondent's Order of September 5, 1990 (Appendix "J").

On September 24, 1990, a Notice of Appeal was filed in respect of Judge Hoffer's Order of September 13, 1990 (Appendix "K"). The fundamental grounds of each appeal sought to challenge the jurisdiction of Respondent in issuing the aforementioned orders.

Petitioner filed with the Superior Court of Pennsylvania, a petition for an Extraordinary Writ of Prohibition (Appendix "L") and a petition for a Writ of Mandamus (Appendix "M") on September 26, 1990. In each of the aforementioned petitions, Petitioner asserted that this Respondent lacked jurisdiction to conduct the remand proceedings which had resulted in his issuance of orders of August 24, August 30, September 5, September 13, September, 27, 1990 and thereafter. Petitioner alleged that Judge Hoffer had failed to comply with the specific order and judgment of Judge Tamilia of the Superior Court of Pennsylvania.

On September 26, 1990, the Superior Court of Pennsylvania denied the Extraordinary Writ of Prohibition without prejudice, citing lack of jurisdiction. The Petition For Mandamus, filed in the Superior Court of Pennsylvania was likewise denied on October 5, 1990.

Counsel for Mrs. White motioned the Superior Court of Pennsylvania to quash an appeal of this Petitioner on October 15, 1990. The grounds relied upon were that the remand proceedings were interlocutory and therefore not appealable. The aforementioned motion by Mrs. White was granted by the court and the appeal was accordingly dismissed on October 30, 1990.

On November 13, 1990, the Superior Court also denied unto this Petitioner a Petition for Certiorari and an Application For Stay filed on October 10, 1990; subsequent petitions to the Supreme Court for the Commonwealth of Pennsylvania were also denied.

On May 5, 1992, Respondent, Judge Hoffer, apparently *sua sponte*, faxed counsel for Petitioner an Order scheduling a hearing for May 8, 1992. No further explanation was given in the said facsimile transmission. Judge Hoffer refused to advise the nature of the hearing when telephoned by counsel to this Petitioner. Respondent further denied request of counsel to the Petitioner for an adjournment (Appendix "N") and proceeded with the hearing on May 8, 1992. As a result of the said hearing, Respondent issued an Order of the Court on May 8, 1992 (Appendix "P"), purportedly in pursuance of the aforementioned Order of September 5, 1990 (Appendix "H"). Petitioner being unable to comply with the said Order of May 8, 1992 and believing such to have been made in the absence of jurisdiction,

appealed the said Order to the Superior Court of the Commonwealth of Pennsylvania. By letter dated September 29, 1992 (Appendix "Q"), Petitioner was advised by staff counsel to the said Superior Court that the court considered the Order of May 8, 1992 to be interlocutory and therefore not appealable.

Petitioner being unable to comply directly or indirectly with the Order of the court of May 8, 1992 became subject to a further Order of Judge Hoffer (Appendix "R"), in which Petitioner was ordered to show cause why he should not be held in contempt of the said order of May 8, 1992. Petitioner thereby petitioned the Superior Court of the Commonwealth of Pennsylvania for an Extraordinary Writ of Prohibition (Appendix "S") and made an Application For An Emergency Stay (Appendix "T") on September 10, 1992. Both of the aforementioned applications were denied to Petitioner on September 11, 1992 on the grounds that the said Superior Court had no jurisdiction over interlocutory proceedings. Respondent found J. Nevin White (Petitioner) in contempt of the orders which he had made on September 5, 1990 and May 8, 1992, issuing a warrant for Petitioner's arrest and detention (Appendix "U").

Petitioner now has no other specific legal remedy to orders issued by Respondent which are clear abuses of discretion and a judicial usurpation of power.

Petitioner will be 67 years old on October 25, is in poor physical health and is now under threat of being incarcerated by the unlawful and *ultra vires* actions of the Respondent.

Judge Hoffer has since 1990 been able to contain the remanded "tax consequences" proceedings locked in an interlocutory posture for the specific purpose of preventing examination of his conduct by the State Judicial Review and Appellate System, while continuing to issue orders adverse to the Petitioner. Such conduct has denied unto this Plaintiff the right to due process.

Statement of Facts in Support of Questions Presented

This Petitioner separated from his wife in 1970 with the parties having been involved in protracted divorce proceedings for many years. Numerous pleadings have been filed, hearings held and a number of counsel retained by both parties. The majority of the litigation has revolved around the issue of equitable distribution of property deemed to be matrimonial assets.

Equitable distribution ordered by Judge Hoffer on April 6, 1988 (Appendix "A") was successfully appealed by Petitioner to the Superior Court of the Commonwealth of Pennsylvania with the matter having been remanded to Judge Hoffer for consideration of the "tax consequences" of his Order.

Throughout the marriage of the parties and subsequently, the Petitioner was the co-owner of the predecessor and later President of the successor, J. Nevin White Lumber Company, a Pennsylvania corporation situated in Duncannon, Perry County, Pennsylvania. The said corporation has continued to operate and has been deemed by both the court of first instance and the appellate courts to be part of the matrimonial assets which are subject to equitable distribu-

tion in White v. White (4730 Civil 1981, Cumberland County, Pa.).

Pending the aforementioned distribution, the Petitioner, as constructive trustee of Mrs. White's equitable interest, was obligated under law to preserve and prevent the dissipation of the said interest. The corporation continued to operate during the various court proceedings. Economic conditions, the Petitioner's health, age, the corporation's operating losses and the danger of it being forced into bankruptcy caused Mr. White (Petitioner) to consider suitable offers for the sale of the corporation. With a continued decline in trade and the company's increasing losses, Petitioner accepted the offer from a Portuguese corporation, Euro-Ceramica, S.A. The purchase was made by way of payment of fully negotiable promissory notes to be paid to the Petitioner over a given period of years. Conditions of the sale also required that Petitioner continue to manage certain operations of the company. Additionally, the timing of the payments upon the promissory notes was subject to the resolution of the divorce proceedings.

It was the details of this particular sale which came under the scrutiny of Judge Hoffer in his purported remand hearing (for consideration of tax consequences). Despite full explanation being given under oath, the transaction having been fully documented and properly recorded pursuant to State and Federal Law, Judge Hoffer issued his Order of September 5, 1990 (Appendix "H").

Since the Remand Order was handed down to Respondent, Petitioner, through his counsel has continually sought to determine the court's jurisdiction, if any. The Remand Order from the Superior Court was clear and specific, how-

ever, Respondent has throughout ignored the Order of Judge Tamilia of the Superior Court, or sought to interpret it in his own way. Judge Hoffer has also been able to retain jurisdiction over the remanded case by continuing to treat it as interlocutory, thereby curtailing any appellate review.

The net effect of Respondent's orders of September 5, 1990 and May 8, 1992 was to negate the sale of J. Nevin White Lumber Company to Euro-Ceramica, S.A., totally voiding the contract of sale and revesting title to Petitioner, who was then required to surrender the corporation and its assets to a receiver appointed by Judge Hoffer. Additionally, Petitioner was required to post a $1.6 million bond with the court.

Apart from the Petitioner being totally unable to comply with said Order, Judge Hoffer lacks any jurisdiction. Appeals and petitions for prerogative writs to the appeal courts in the Commonwealth of Pennsylvania have been denied on the basis of Judge Hoffer's Orders arising out of "interlocutary proceedings". Nevertheless, Respondent issued a warrant for the arrest of Petitioner (See Appendix "U").

Submissions in Support of Questions Presented

1. Did the Respondent act within the jurisdiction of the Order of Judge Tamilia of the Superior Court of the Commonwealth of Pennsylvania, when the aforementioned court vacated the Respondent's Order for equitable distribution dated April 6, 1988, citing *". . . such distribution must be made with tax consequences in mind. . ."*?

The Petitioner has been subject to the orders of Respondent, who as a judge of the Court of Common Pleas in the Commonwealth of Pennsylvania, purported to exercise the jurisdiction remitted by the Superior Court of the Commonwealth.

Judge Tamilia's Order was specific. No construction can be placed upon that Order which would have permitted the Respondent to have conducted the proceedings which led to the orders of September 5, 1990 and subsequently.

The Order and Judgment of the Superior Court (Appendix "B") *inter alia* ordered:

> "We, therefore, find that failure to consider tax consequences in this case results in a severe imbalance in equitable distribution and such a distribution must be made with tax consequences in mind, or another form of distribution devised, whether it be in kind, notes, etc." (Page 9, Paragraph 2)

In the final paragraph of the judgment at Page 11, the Learned Judge ordered:

> "Accordingly, we affirm the determination of the value of the property subject to equitable distribution, the percentage of the marital property awarded to each part and the creation of a constructive interest in the Bermuda trust in the wife, but vacate the Order of distribution and the Order as to counsel fees and court costs and remand for a determination by the trial court of the effect of tax consequences in a final award of distribution.
>
> Jurisdiction relinquished."

Examination of both the orders of September 5, 1990 (Appendix "H") and May 8, 1992 (Appendix "P"), as well as other orders in the same context of the purported remand proceedings, does not indicate Judge Hoffer's compliance with the directions of the Superior Court. It is apparent that Judge Hoffer has sought to place his own interpretation on the aforementioned judgment of the Superior Court.

The proceedings were deemed interlocutory by the Respondent, who appears to have chosen to completely ignore the guidelines imposed by the Superior Court with regard to tax consequences.

From the outset, Petitioner through his counsel, has protested and appealed Judge Hoffer's interpretation of the Remand Order, continuously challenging Respondent's jurisdiction.

It is submitted that in Equity, "It is not allowable to interpret what has no need of interpretation". (See *Ruggles v. Illinois*, 108 U.S. 526, 2 S. Ct 832, 27 L.Ed 812). In *White*

v. White, Judge Hoffer has done precisely the opposite of the cited maxim and effected his own interpretation when none was necessary. Since the directions of Judge Tamilia's Order were precise and unambiguous, it was the duty of Judge Hoffer to carry out the execution of the Order without looking elsewhere to change the meaning or direction of the Order. (See *Titusville Iron Works v. Keystone Oil Co.*, (1880) 18A 739, 130 Pa 211, 37 P.L.J. 149, 25 W.N.C. 63)

Even if the Respondent had considered the mandate of the Superior Court ambiguous or uncertain, it was incumbent upon Judge Hoffer to either apply the usual rules of interpretation or construction (See *Evans v. Fidelity & Deposit Co. of Maryland*, (1931) 40 F.2d 86) or to seek clarification of the mandate from the Superior Court.

According to Pennsylvania Law, a trial court is considered bound by the determination of the appellate court as the law of the case. (See *Smyth v. Klaunder*, (1931) 52 F.2d 109, *certiorari* denied; *Klaunder v. Smyth*, 52 S. Ct 199, 284 U.S. 681, 76 L.Ed 575; *Columbia Chemical Co. v. Duff*, (1911) 184 F. 876, 107 C.C.A. 200; *Cheltenham & Abington Sewerage Co. v. Pennsylvania Public Utility Commission*, (1946) 49 A. 2d 707, 355 Pa 377, appeal dismissed and *certiorari* denied 67 S. Ct. 1205, 331 U.S. 784, 91 L.Ed 1815; *Thaler v. Wilhelm Grelsser Const. Co.* (1911) 79 A. 147, 229 Pa 512)

The lower court (Judge Hoffer's) is without any power to modify, alter, amend, set aside or, in any manner, disturb or depart from the judgment or decree of the appellate court, as to the matter decided on appeal. (See *Haefele v. Davis*, (1955) 410 A. 2d 233, 380 Pa 94)

In the particular instance of this mandate, the Superior Court has made a specified condition upon which the appellate judgment was to depend, namely "tax consequences" of the Order for equitable distribution.

The Respondent was without any power, as a judge of the Court of Common Pleas, to open, vacate, modify, alter, extend or relieve from the precise fulfillment of the specific condition imposed by the Superior Court, appertaining the required review of "tax consequences". (See *Reimel v. Northwestern Trust Co.*, (1930) 150 A.593, 300 Pa 181)

Respondent, in his conducting of the remand proceedings, has acted outside the specific jurisdiction remanded to him by the Superior Court and such action is *ultra vires*. All orders arising out of these proceedings are therefore *void ab initio*.

2. Was the Petitioner in willful contempt of the Respondent's Order of May 8, 1992, since the Respondent had acted *ultra vires* in the rendering of all orders purportedly pursuant to the remand order by Judge Tamilia?

Despite the premises set out above, that the Respondent acted *ultra vires*, Petitioner has been found in contempt of court and is now subject to being arrested and imprisoned. He has no route of appeal or judicial review since the Appellate Courts have deemed the proceedings before Judge Hoffer to be "interlocutary" and therefore not appealable.

Although Petitioner has continually disputed the validity of Judge Hoffer's jurisdiction, he has throughout endeavored to comply with the Respondent's orders until such became impossible. The intention and motives behind Judge Hoffer's conduct aside, it appears that the intention behind his orders has been an attempt to undo the sale by the Petitioner of J. Nevin White Lumber Company to Euro-Ceramica, S.A.

Such action is inconsistent with the equitable doctrine, *"Equity does not relieve from hard bargains simply because they are such"*.

Judge Hoffer, in making his orders of September 5, 1990 (Appendix "H") and May 8, 1992 (Appendix "P"), is indirectly requiring the Petitioner to breach his contract with Euro-Cermica, S.A. (the Portuguese purchasers).

This conduct by Judge Hoffer has no support in Equity which provides that a court cannot require a party "*to do indirectly what he cannot do directly.*" (*Nemo potest facere per obliquim quod non potest facere per directum*) (See *The Commercen*; 1. Wheat 382, 4 L.Ed 116; *Gantly v. Ewing*, 3 How 707, 11 L. Ed 794; *Cummings v. Missouri*, 4 Wall 277, 18 L.Ed 356; *Clarke v. Clarke*, 178 U.S. 186, 20 S.Ct 873, 44 L.Ed 1058; *McCallen Co. v. Massachusetts*, 279 U.S. 620, 49 S. Ct 432, 65 ALR 866, 73 L. Ed 874)

Since it is impossible for the Petitioner to comply with such orders of Judge Hoffer, he could not in any event be considered to be "in willful contempt" thereof.

Regardless as to whether or not Petitioner could have complied with the aforementioned court orders issued by Respondent, it is submitted that Judge Hoffer's adjudication in finding this Petitioner in contempt was entirely without jurisdiction. Such a determination is therefore *void*. (See *Re Sawyer*, 124 U.S. 200, 8 S. Ct 482)

The reported disobedience of the Petitioner to Judge Hoffer's orders cannot be regarded as contempt in that the issuance of the orders was unlawful. (See *Ex parte Moses* (1892, CC Pa) 53 F. 346)

Accordingly, Judge Hoffer had no power to issue a warrant for the arrest of the Petitioner in an attempt to punish him for the alleged contempt. The Order of Judge Hoffer is void for lack of jurisdiction. (See *Abbott v. Eastern Massachessets Street R. Co.* (1927, CA 1 Mass) 19 F.2d 463; *United States v. Thompson* (1963, CA 2 NY) 319 F.2d 655)

Conclusion

Respondent in failing to comply with the directions of the judgment of the Superior Court for the Commonwealth of Pennsylvania divested himself of any jurisdiction over the remanded proceedings.

In treating the purported remand proceedings as interlocutory, Judge Hoffer was able to prevent the Petitioner from appealing his orders or to obtain judicial review of his decision. Petitioner, having exhausted all avenues of appeal, review or any other specific legal remedy, was no longer able to obey the Order of Judge Hoffer.

The Respondent, having failed to comply with the specific and unambiguous directions of Judge Tamilia in the Superior Court of the Commonwealth of Pennsylvania, thereafter acted *ultra vires* rendering all of his subsequent decisions *void ab initio*.

Findings of contempt, in the absence of any jurisdiction, are void and hence unenforceable.

Relief Requested

1. An Order quashing all proceedings, decisions, orders and pleadings in pursuance to the purported jurisdiction exercised under color of the remand of the aforementioned Superior Court for the Commonwealth of Pennsylvania in the case of *White v. White*, No. 4730 Civil 1981, Court of Common Pleas, Cumberland County, Pennsylvania.

2. An Order directing the Court of Common Pleas, Cumberland County, Pennsylvania to conduct forthwith the remand hearings appertaining the determination of the "tax consequences" of the Order of Equitable Distribution, subject of the Order of Judge Tamilia of the aforementioned Superior Court, dated February 24, 1989.

3. Make such other Order as this court, in all the circumstances of this case, deems fit and proper.

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Appendix A—Order of Judge Hoffer, Dated April 6, 1988 Court of Common Pleas, Cumberland County

IN THE

COURT OF COMMON PLEAS OF CUMBERLAND COUNTY, PENNSYLVANIA

WILLA E. WHITE,

Plaintiff

v.

J. NEVIN WHITE,

Defendant

No. 4730 Civil 1981

Civil Action—Law in Divorce

IN RE: PLAINTIFF'S AND DEFENDANT'S EXCEPTIONS TO MASTER'S REPORT

Before SHEELY, P.J. and HOFFER, J.

ORDER OF COURT

AND NOW, this 6th day of April, 1988, for the reasons appearing in this opinion and in the Master's report, the following is ordered:

1. Upon presentation to the court of the appropriate Decree in Divorce to be entered pursuant to §201(d) of the Divorce Reform Code of 1980, the court will sign same.

2. Equitable distribution is as follows:

A. To plaintiff:

(1) The parties' jointly-owned residence at 863 Hilltop Road, Lemoyne, PA, with all furniture and fixtures situate therein;

(2) The parties' jointly-owned securities, having a value of $25,761.16;

(3) Plaintiff's individually-owned life insurance policies, with cash surrender value of $46,334.90;

(4) The two jointly-owned lots in Florida, at Bethel Isle, worth $85,000; and at Veromer, worth $52,000;

(5) Plaintiff's individually-owned securities having a value of $13,862.38;

(6) A cash distributive award of $1,662,990.00, payable in equal quarterly installments over ten (10) years from the date of the divorce decree, with interest at a rate of seven (7) percent per annum. As security for the obligation, the defendant shall cause J. Nevin White Lumber Co., Inc. to issue a note payable to plaintiff for the above amount, and personally and individually guarantee such note. Additionally, defendant shall give to plaintiff a first-mortgage lien on defendant's individually-owned Centre County and Juniata County timberlands as security for said obligation. Further, defendant shall pledge fifty (50) percent of the capital stock of J. Nevin White Lumber Co., Inc., as security for the obligation.

b. To the defendant:

(1) Defendant's individually-owned interest in Timberland in Centre County, with value of $694,500.00;

(2) Defendant's individually-owned interest in timberland in Juniata County, with value of $60,000.00;

(3) Defendant's individually-owned Swiss francs, valued at $15,000.00;

(4) Capital stock of J. Nevin White Lumber Co., Inc., valued at $2,735,000.00;

(5) The parties' jointly-owned bank account at Juniata Valley National Bank, having a value of $3,728.34;

(6) The parties' jointly-owned cemetery lots, with value of $120.00.

3. No award of alimony will be granted to plaintiff, since she fails to meet the requisites of §501(a) of the Divorce Code.

4. Defendant will contribute $24,000.00 toward the payment of plaintiff's legal fees and expenses. Defendant will be solely and exclusively responsible for costs in excess of amounts currently on deposit with the prothonotary. Further, defendant shall reimburse plaintiff in the amount of $2,000.00 for court costs.

By the Court,
GEORGE E. HOFFER, J.

RICHARD C. SNELBAKER, ESQUIRE
For the Plaintiff

ARTHUR A. KUSIC, ESQUIRE
For the Defendant

Appendix B—Order of Penna. Superior Court, Dated February 24, 1989 Opinion by Judge Tamilia

IN THE

SUPERIOR COURT OF PENNSYLVANIA

WILLA E. WHITE

v.

J. NEVIN WHITE,

Appellant

NO. 00345 HARRISBURG, 1988

Appeal from the Order entered in the Court of Common Pleas of Cumberland County, Civil Division, No. 4730 Civil 1981

Before: WIEAND, OLSZEWSKI and TAMILIA, JJ.

OPINION BY TAMILIA, J.: FILED: FEBRUARY 24, 1989

This is a timely appeal by defendant J. Nevin White of a Decree in divorce and Order incorporated therein providing for equitable distribution of the marital property, awarding appellee attorney's fees and costs, and denying appellee alimony. On appeal, appellant contest the trial court's distribution of marital property and award of attorney's fees.

The parties were married on November 23, 1946. During the course of their marriage they had two children, both of whom are emancipated adults. The parties separated on June 2, 1970 and have not resided together since that date. Appellee Willa E. White filed a complaint in divorce on December 24, 1981, alleging grounds for divorce pursuant to 23 P.S. §201(d) of the Divorce Code, 23 P.S. §101 *et seq*. Eleven hearings were held before a master during 1985 to resolve appellee's claims for equitable distribution, alimony *pendente lite*, alimony and counsel fees and costs. Timely exceptions to the master's report and recommendations were filed by both parties. After review of the exceptions, the trial court upheld the master's finding with the exception of the valuation of appellant's one-fourth interest in timberland located in Centre County, which the trial court concluded required an increase in the cast distributive award to appellee of $10,140 (Slip. Op. Hoffer, J., 4/6/88, p. 6). This appeal followed.

Appellee was born on March 26, 1926, making her 60 years old at the time of the master's report and 62 years old at the time of the appeal. The family unit remained intact for the first 24 years of the marriage, with appellee working in appellant's lumber business without remuneration for the last 14 years prior to their separation in 1970, in addition to her being a homemaker. She has a high school education with little training and is suffering from a series of serious and chronic health problems which will prohibit any future gainful employment. Appellee has remained in the marital home since separation, receiving monthly spousal support by court Order in the amount of $2,100.

Appellant was born on October 25, 1925, making him 61 years old at the time of the master's report and 63 years old at the time of this appeal. Appellant is the sole stockholder and owner of J. Nevin White Lumber Company, Inc. (hereinafter "White Lumber"), and earns a salary of $53,000 per year, plus substantial fringe benefits. The trial court did not disturb the master's finding that the value of the company as of the date of the divorce was $2,735,000. Appellant also has a disputed interest in a Bermuda Corporation known as White Timber, Ltd., which was

established and is controlled by a trust created by appellant's aunt in Bermuda in 1976. White Timber, Ltd., is a foreign income sales corporation or FISC, designed to defer or avoid United States income taxes for the sale of domestic lumber produced by appellant's lumber company in the international market.

The trial court made the following distribution of marital property after largely upholding the findings of the master:

APPELLEE

Description	Value or Amount
Marital home	$ 110,000.00
Household goods and furnishings	3,138.00
Joint securities	25,761.16
Individually owned life insurance policy	46,334.90
Bethel Isle, Florida lot	85,000.00
Veromer, Florida lot	52,000.00
Individual securities	13,862.38
Cash distributive award	1,662,990.00
Total	$1,999,086.44

APPELLANT

Timberland, Centre County	$ 694,500.00
Timberland, Juniata County	60,000.00
Swiss francs	15,000.00
White Lumber capital stock	2,735,000.00
Joint bank account	3,728.34
Two cemetery lots	120.00
Total	$3,508,348.34

In connection with the cash distributive award of $1,662,990, the trial court directed it be paid in equal quarterly installments over a ten-year period from the date of the divorce decree with interest at a rate of seven percent per year. This would make appellant's payments approximately $57,803 per quarter or $231,214 per

year. As security for the cash award, the trial court directed appellant to have White Lumber issue a note payable to appellee for the full amount of $1,662,990 with appellant's personal and individual guarantee on the note. Additionally, appellant is to give appellee a first mortgage lien on appellant's timberland in Centre County and Juniata County, as well as pledge 50 per cent of the capital stock of White Lumber as security for the obligation. The trial court determined that because of the large equitable distribution award appellee was not entitled to alimony, 23 P.S. §501(a)(1), but it did award appellee $24,000 in legal fees and expenses and $2,000 in court costs.

Appellant's first claim is that the trial court erred in determining the equitable distribution award by failing to consider that the amount of the cash distributive award to appellee will allegedly force appellant to liquidate his business and consequently cause White Lumber to incur adverse tax consequences. Appellant argues the inevitable deflation in value a liquidation sale produces, plus the brokerage costs of selling and adverse tax consequences such a sale would result in, will substantially and unjustly decrease appellant's share of the marital assets distributed without affecting appellee's share.

In evaluating an equitable distribution scheme, our scope of review is limited. An appellate court will not reverse an Order determining equitable distribution absent an abuse of discretion by the trial court. *Johnson v. Johnson*, 365 Pa. Super. 409, 529 A.2d 1123 (1987); *Campbell v. Campbell*, 357 Pa. Super. 483, 516 A.2d 363 (1986); *Bold v. Bold*, 358 Pa. Super. 7, 516 A.2d 741 (1986).

Appellant repeatedly argues the master and trial court "ignored" and "overlooked" the alleged forced liquidation and tax consequences involved in a cash award to appellee, and appellant argues the trial court is "silent" as to liquidation or the manner in which appellant should pay appellee the yearly payments of the cash award (appellant's brief at 14-16, 18-20 and 23). Moreover, appellee relies on our holding in *Morschhauser v. Morschhauser*, 357 Pa. Super. 339, 516 A.2d 10 (1986), that a

cash award to one spouse was not an abuse of discretion and was amply justified by the trial court's rationale under the circumstances despite an allegation the award would force a liquidation of the paying spouse's business holdings. Appellant argues that unlike the *Morschhauser* court, the present trial court failed to address the liquidation issue in its Opinion, leaving a fatal absence of any supporting rationale as to how the cash award could be paid by appellant. After review of the record, we agree.

The Pennsylvania Supreme Court recently addressed the tax consequences or liability in equitable distribution in *Hovis v. Hovis*, ____ Pa. ____, ____, 541 A.2d 1378, 1380-81 (1988), where the Court stated:

> This case represents the classic quandary that confronts our trial courts regarding the issue of potential tax liability as it effects the equitable distribution of property. If a taxable event such as a sale or other transfer of property is required by the award of equitable distribution, or is certain to occur shortly thereafter, the tax liability of the parties can be reasonably ascertainable. However, where there is merely a likelihood or possibility that a taxable event will occur, the court is left to speculate as to the tax consequences.
>
> * * *
>
> In order to insure a "fair and just determination and settlement of property rights" we favor predictability over mere surmise in the valuation and distribution of marital property after divorce. Accordingly, we hold that potential tax liability may be considered in valuing marital assets only where a taxable event has occurred as a result of the divorce or equitable distribution of property or is certain to occur within a time frame such that the tax liability can be reasonably predicted.

(Footnote omitted.) The liquidation of White Lumber is a taxable event and with ten partial liquidations foreseeable to provide the funds for payment of the award, the calculation of tax consequences as to these liquidations, in whole or in part, can be readily predicted.

As stated before, appellee alleges this case is positively disposed of by the holding in *Morschhhauser, supra*, while appellant would find it is distinguishable from the instant case. In *Morschhauser*, the trial court considered and appropriately dealt with that issue, which we recognized in rejecting the claim that liquidation of the business would be required and the husband would suffer adverse tax consequences. There, we said:

> The final claim made by appellant is that the court erred in requiring an immediate payment of the entire equitable distribution award, in the amount of $127,641.25. He contends this will force him to liquidate his business holdings or suffer adverse tax consequences.
>
> The court directly addressed this argument and determined appellant could produce part of the sum from his annual income, (gross income was found to be approximately $155,000.00) with the remainder obtained through a bank loan or by reaching some accommodation [*sic*] with appellee/wife. The court did not agree with appellant's contention that the measures he claims are necessary are actually required to meet this obligation.
>
> The court also upheld the immediate payment because the alimony award was based on the wife having a large amount of investment capital to produce income. If the payment of the distribution amount was spread out over time, appellant would be required to pay interest, the same as if he obtains a bank loan to pay appellee.
>
> We find no abuse of discretion by this court in reaching this determination. The rationale provided by the court is sufficient to justify the action.

Id. at ____, 516 A.2d at 16.

The financial structure, business enterprise, distribution award, earnings and consequences of the award in the present case are radically different from those in *Morschhauser.* There, it was reasonably determined liquidation was not required to effect distribution. Here, it appears unavoidable and, therefore, presents a taxable event. This Court in *Diamond v. Diamond,* 360 Pa. Super. 101, 519 A.2d 1012 (1987), held the court must consider tax consequences on equitable distribution. Amendments to the Divorce Code, filed February 12, 1988, require the court to undertake such consideration. Section 401(d)(10), as amended, states the court shall consider:

> The economic circumstances of each party, *including Federal, State and local tax ramifications,* at the time the division of property is to become effective.

(Emphasis added.) While appellee contends it may be inferred the trial court undertook this consideration our review of the record does not support such a view or, if it was considered, the conclusions drawn from the facts were erroneous. There is nothing in the record which supports the court's findings or proposal by appellee that appellant, whose present gross earnings are $52,000 per year, can generate an additional $240,000 a year income by harvesting and selling timber already possessed by White Timber to meet the distribution schedule. Also despite the fact that the Bermuda trust is alleged to have yearly sales of $2,000,000, again there is no evidence as to the amount of income this generates and as to how much appellant is legally able to take in income or profits, even assuming the trust was created for the purpose of putting assets and profits beyond the reach of the wife.

This appears to be a situation in which the marital property is in assets which lack liquidity of funds available for distribution. The court's solution to value the assets, apportion them between the parties and impose the burden on appellant through harder work, loans or sell offs over ten years, to produce the wife's share has failed to take into account this cannot be accomplished without a total or gradual liquidation or heavy loans, which are likely

not to be available since the property is also liened with the wife's security for payment. With liquidation, because of the low-cost value of the acquisition of the marital property, tax consequences will be severe and entirely borne by the husband. Partial liquidation may seriously reduce the capacity of the business to continue to function, as it would appear that for a lumber business to function, it must continually seek out new timber assets to assure continued operation, rather than liquidate those assets to bring about a large short range cash flow.

We, therefore, find that failure to consider tax consequences in this case results in a severe imbalance in equitable distribution and such a distribution must be made with tax consequences in mind, or another form of distribution devised, whether it be in kind, notes, etc.

Next, appellant argues the trial court abused its discretion in assigning a constructive interest to appellant in the trust which established the Bermuda Corporation, White Timber, Ltd. Section 401(d)(8) of the Divorce Code, 23 P.S. §401(d)(8), provides "[t]he value of property set apart to each party" is a valid consideration in equitable distribution. In discussing the appellant's interest in the trust in its review of the award, the trial court gave little weight to appellee's version of the interest held:

> Defendant's beneficial interest, while not capable of being quantified, was amply demonstrated in the record by extensive testimony concerning his numerous trips to Bermuda, some two hundred out-of-country telephone calls concerning the trust, and approximately $2,000,000 in sales to Bermuda by defendant's company. Defendant's obvious reluctance to be forthright about the Bermuda trust was also properly weighed by the Master in arriving at his decision.

(Slip Op. at 7.) Because of the inability to quantify the interest in a dollar amount, we find this was not an abuse of discretion. It goes without saying that we cannot permit a party to siphon off profits and assets which are part of a going concern, construed to be marital property, by passing them through a foreign trust.

Lastly, appellant claims the court abused its discretion in awarding appellee counsel fees of $24.000 plus $2,000 court costs in view of the disposition of the equitable distribution of the marital assets. In determining the propriety of an award of counsel fees an appellate court should employ an abuse of discretion standard. *Vajda v. Vajda*, 337 Pa. Super. 573, 487 A.2d 409 (1985); *Semasek v. Semasek*, 331 Pa. Super. 1, 479 A.2d 1047 (1984), reversed on other grounds, 509 Pa. 282, 502 A.2d 109 (1985). The fact that appellee received support and appellant controlled the business and its assets demonstrates the parties did not litigate this action on equal footing and, as found by the master, appellant employed uncooperative and delaying tactics throughout the proceedings before him. Fee awards are meant to equalize the parties' economic positions in conducting the divorce action. *Hoover v. Hoover*, 288 Pa. Super. 159, 431 A.2d 337 (1981). In *Chaney v. Chaney*, 343 Pa. Super. 77, 493 A.2d 1382 (1985), we found that even though one spouse received a disproportionate share of the marital property in an equitable distribution award this did not preclude an award of attorney's fees. However, in view of the fact this case must be remanded for further hearings and determinations as to the effect of tax consequences on the distribution of the marital property, it is also appropriate to have a redetermination of counsel fees as reflecting the respective awards made to each party.

Accordingly, we affirm the determination of the value of the property subject to equitable distribution, the percentage of the marital property awarded to each part and the creation of a constructive interest in the Bermuda trust in the wife, but vacate the Order of distribution and the Order as to counsel fees and court costs and remand for a determination by the trial court of the effect of tax consequences in a final award of distribution.

Jurisdiction relinquished.

DATED: FEBRUARY 24, 1989
JUDGMENT ENTERED

MILDRED E. WILLIAMSON
DEPUTY PROTHONOTARY

Appendix C—Order of Penna. Supreme Court, Dated September 25, 1989

SUPREME COURT OF PENNSYLVANIA

MIDDLE DISTRICT

Mildred E. Williamson
Deputy Prothonotary

434 Main Capitol Building
P. O. Box 624
Harrisburg, Pennsylvania 17108
(717) 787-6181

October 2, 1989

Richard C. Snelbaker, Esquire
Charles D. Vance, Jr., Esquire
44 Main Street
P. O. Box 318
Mechanicsburg, PA 17055

Re: Willa E. White, Petitioner v. J. Nevin White
No. 097 M.D. Allocatur Docket 1989

Dear Counsel:

This is to advise that the following Orders have been entered on the Petition for Allowance of Appeal and Motion for Admission *Pro Hac* Vice filed for the above-captioned matter:

ORDER
"September 25, 1989,
Motion for Pro Hac Vice Granted
/PER CURIAM."

ORDER
"September 25, 1989,
Petition Denied
/PER CURIAM."

Very truly yours,

SHIRLEY BAILEY
Chief Clerk

SPB/pam

xc: Honorable George E. Hoffer
Albert Momjian, Esquire
Rachel R. Munafo, Esquire
Roland S. Jones, Esquire
Benjamin V. R. Conlon, Barrister

Appendix D—Transcript of "Pretrial Hearing" Court of Common Pleas—February 9, 1990

IN THE

COURT OF COMMON PLEAS OF CUMBERLAND COUNTY, PENNSYLVANIA

WILLA E. WHITE,

Plaintiff

V.

J. NEVIN WHITE,

Defendant

CIVIL ACTION—LAW

4730 CIVIL 1981

IN RE: PRETRIAL HEARING

Proceedings held before the Honorable GEORGE E. HOFFER, J., Cumberland County Courthouse, Carlisle, Pennsylvania, on Friday, February 9, 1990, commencing at 2:00 p.m. in Courtroom Number Three.

APPEARANCES:

RICHARD C. SNELBAKER, Esquire
CHARLES D. VANCE, JR., Esquire, For the Plaintiff

BENJAMIN V. R. CONLON, Esquire, For the Defendant

(2)

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(3)

February 9, 1990
Carlisle, Pennsylvania

THE COURT: Good afternoon. I apologize for the delay. We had a judges conference that carried over.

Now, what is on the agenda for this afternoon?

MR. SNELBAKER: If the court please, this is the time—

THE COURT: Who is with you, Mr. Snelbaker?

MR. SNELBAKER: I am sorry. This afternoon I have with me my associate, Charles Vance. I have the Plaintiff, Mrs. White, and I have our certified Public accountant, Thomas C. Wetzel.

We are here on the order of Your Honor dated January 19, 1990. You scheduled the pretrial conference and to have a hearing on the matters on the Rule to Show Cause which the court had issued on January 4, 1990.

I would like to put on the record, if I may, at this Point, your Honor, a history of where we are—

THE COURT: Well—

(4) MR. SNELBAKER: Summarizing how we get to where we are this afternoon, if I may.

THE COURT: Well, we will get to that in a second.

MR. SNELBAKER: Surely.

THE COURT: But what are your ideas of what we are doing this afternoon?

MR. SNELBAKER: Your Honor, in the documents that were filed on the 4th of January, we were at that point seeking information concerning the status of the J. Nevin White Lumber Company, as to whether it was a C or S corporation by election, to further consider and prepare for the hearing which is now scheduled for Monday, the 12th. We had asked that that information be provided at the time of the hearing or the pretrial conference scheduled for the 19th.

There was no appearance by the defendant at that matter, and while in chambers, getting to the point of the pretrial conference, we received a call on behalf of the defendant, at which we learned some additional information which was to the effect that—well, actually we had known that by a letter previous to that and was confirmed in that telephone conversation that the defendant had disposed of the stock which is the substance of the income tax issue which is before the court on (5) remand from the Superior Court.

And in that telephone conversation, in your presence, we requested information, And the court then issued the order on the 19th, indicating that we would have the opportunity to determine what the circumstances were with regard to this stock.

So, in today's hearing portion of this, we asked that the defendant be present—and I have issued a subpoena for his presence and he is present—so that we can determine two matters.

One, what the tax status of the corporation was and is, and, secondly, what the status of the stock ownership is, which seems to be the crux or is the crux of the issues which are left for the court yet to decide. And that is why we are here. And only that point.

There is to be a hearing then scheduled for February 12th, which goes to the main portion of the remand, which is the reason for getting the information necessary today, sir.

THE COURT: All right. Now, you are Mr. Conlon.

MR. CONLON: I am Mr. Conlon. This is Mr. Jones, who assists me in this, and, of course, this is Mr. White, the Defendant in this matter.

Your Honor, there are certain matters which (6) would would seek to address you upon before we proceed in this pretrial conference, if your Honor would be good enough to hear me on this.

Your Honor, chronologically, I have to deal with how it comes about that we are here today, and that it may be that I take issue on the facts which have been summarized by Mr. Snelbaker about what happened.

Your Honor, it is clear to the court that on December 14th, there was a hearing at which I was not at. And there is correspondence—

THE COURT: Well, I don't want to get into that all right now.

MR. CONLON: If your Honor would please allow me to address you on this, because it is pertinent as to where we stand today and the chronology of it. The chronology of it has been—

THE COURT: Well, I haven't heard from Mr. Snelbaker on this chronology, and I think that that is something that I would rather let go for the moment. We have a hearing coming up on Monday.

MR. CONLON: Well, your Honor, that is a matter which—

THE COURT: Now—

MR. CONLON: I am sorry.

THE COURT: Do both counsel agree that the (7) higher court has remanded this to me to take testimony on the issue of the tax consequences if my original order on Mr. White is to be followed? Is that true or not true?

MR. CONLON: Which original order are you speaking about?

THE COURT: The one that was appealed to the higher court. The one the higher court ruled on.

MR. SNELBAKER: I agree in substance with what you have said, that the question is on the tax consequences of the distribution, particularly as it relates to the corporate stock.

THE COURT: All right. Mr. Snelbaker agrees. Do you agree, sir?

MR. CONLON: With the caveat—and this is why it is important that I dwell on this—is that the order made, the order of the 6th of May 1988, is something which I would invite your Honor to perhaps explain more clearly.

It is my understanding, looking at the law on this, that what was granted on May 6th by your Honor was a decree absolute, that the divorce was final. And, your Honor, I rely upon what is set out in the docket of this particular case. Your Honor does have a copy of the docket because I saw to it that one was sent to you.

THE COURT: I don't know what you are (8) getting at, sir.

MR. CONLON: If you bear with me, I will be happy to assist you on this,

Your Honor, before your Honor can examine the equitable distribution of the property of the parties to the divorce, the divorce must be final. And your Honor has to be satisfied of that. And there are a number of cases which I will refer your Honor to if need be—

THE COURT: I don't have any idea what you are talking about, sir. I made an order several years ago. It was appealed through the higher courts. The highest court of Pennsylvania has referred it back to me now to take additional testimony on tax liabilities. That is what I intend to do.

MR. CONLON: Your Honor, I fully understand what it is that the Supreme Court has indicated to your Honor is necessary and

the matter has been remanded. The fact of the matter is this, is it whether or not you have jurisdiction to do that at this particular point in time.

THE COURT: Well, I think that you should file a petition with the Supreme Court of Pennsylvania then saying that I don't have jurisdiction.

MR. CONLON: No, that is not the case. That is not the case. The fact of the matter is this, and that is that if the case has been remanded, which it has (9) been, to your Honor to examine the tax consequences, it is clear that insofar as the Supreme Court is concerned, the order that you give of May 6, 1988, was a final decree in divorce. Now, that is what is written on the docket. And I would be inviting your Honor to confirm that.

Because if it is not a final decree in divorce, then your Honor has no jurisdiction to deal with the equitable distribution. Because the cases clearly show that there must be an end, a finality of the divorce.

And, your Honor, I have got these cases here. And will your Honor look at them if you don't accept that argument? It is really a simple point.

THE COURT: Are you saying there is a question about whether the divorce is final or not?

MR. CONLON: I am suggesting to you that in order—

THE COURT: Just say yes or no to that. Are you suggesting that there is a question about whether the divorce is final or not?

MR. CONLON: It certainly seems to be the case in the mind of Mr. Snelbaker.

THE COURT: Is the divorce final or not final?

MR. SNELBAKER: Your Honor, I mean let me just give you the—

(10) THE COURT: You answer that yes or no.

MR. SNELBAKER: The answer to that is no, it is not final. It is not final because it has been appealed. The final order, the court order was appealed and it has been remanded back.

All of this—and I am going to respectfully suggest—is being raised for another purpose independent of this hearing today. We

have pending in Dauphin County, as we speak, an enforcement order on a old support case. And what is happening is that it is being raised over there that these folks are divorced and therefore the spousal support is over. That is what this—I am believing that that is what this argument is being made here today.

This has got nothing to do with our—with our proceedings here. You have jurisdiction of this case, You never lost jurisdiction of it.

It was appealed, it has been remanded. It has been returned, the record has been returned. And we are here now, you have jurisdiction, If you don't, nobody does. Then there is no way that this can be on a remand.

MR. CONLON: Your Honor, can I say that there are two matters in principal that I intend to raise today if your Honor would hear me? That is, first of all, the question of jurisdiction which, in deference to Mr. (11) Snelbaker, he skated around and has tried to put to your Honor. That is the question of the ultimate jurisdiction as to equitable distribution.

The other one I would seek to put to your Honor is the validity of this particular pretrial conference today. Is it a pretrial conference or not? And what is the basis of the subpoena which was issued purportedly by—well, the issue properly supported by Mr. Snelbaker and the circumstances?

THE COURT: Now, wait a second. I want to keep this whole thing very simple, and I don't mean—I don't need a six inch thick brief to get to the bottom of it.

Are you saying I can take testimony Monday on this tax question or not, Mr. Conlon?

MR. CONLON: Well, your Honor, I am saying this, the answer clearly from the law is no, you can't.

THE COURT: Well, I don't think that is a correct statement at all, sir.

MR. CONLON: Well, the reason being is this, insofar as the scheduling of the pleadings in this particular case, the defendants have not had the benefit of a brief from the other side. And the

order—or the purported order which was made well, your Honor, if you will hear me out on this.

(12) THE COURT: All right. Well, we can always change scheduling times here. Part of the problem is, sir, the only address that I started with on you was supplied by Mr. Snelbaker, and he says that he got that from your court appearance in Pennsylvania Supreme Court. It was in New York somewhere. Although I purport to have several letters from you, sir, signed with your name, or at least signed by someone on your behalf, I don't remember receiving any letter from you yet—

MR. CONLON: Well, your Honor, Mr. Snelbaker—

THE COURT:—on your personal letterhead, sir, with an address where I know I can reach you.

MR. CONLON: Mr. Snelbaker, at all times, together with the Superior Court and the Supreme Court and also the court in Dauphin County, have been well aware of my address, which is permanently—I have had one in England and I got one here.

The one here changes because, as your Honor perhaps realizes, I practice internationally. Therefore, I have always been contactable, and the courts have always in all circumstances been fully aware and have had correspondence with me in England. And I can't see the difficulty with respect—

THE COURT: Sir, I am giving you the (13) benefit of the doubt that you can practice in Pennsylvania and I am not getting into that, at least right now. But I would like to have an address in the United States of America where I can send mail to you and I can expect that you would receive it. Will you give me such an address?

MR. CONLON: Well, the address I am using is the one in Maryland, and your Honor has that. It is Mr. Jones' address, and your Honor has that on record.

THE COURT: Go ahead and spell it out for the record.

MR. CONLON: The address is P.O. Box 2575, Salisbury, Maryland, 21801.

THE COURT: All right.

MR. CONLON: Now, so far as the other matter which you just touched upon—well, no, I will go back to the main premise of my address to you, and that is this, first of all, insofar as this pretrial conference is concerned today, exactly what is the purpose—what are the purposes of it?

The intention of the plaintiff's is not clear in the circumstances. If it is to adduce testimony to assist them in preparing their brief, first of all, they are out of time in filing their brief as per the order of your previous order of January 4th, which should have been with us on the 22nd.

(14) Secondly, any order that this court has made does not seem to be on the docket. Certainly not on the 30th of January. I had no notice of it. Nor had—nor was there any indication that it was an order of this court in the circumstances, and had it not been—had it not been for the fact that it was mentioned in passing after a request by me to Mr. Snelbaker in the Dauphin County proceedings that the briefing schedule had been suspended, we would have been in ignorance of the fact that it had been suspended and the circumstances.

THE COURT: All right, Now, I want—

MR. CONLON: If You would let me finish—

THE COURT: No, sir, no, sir, please. I want to cut through all that. And if you haven't had enough time to prepare whatever briefs you want to prepare, we will put Monday's hearing off. But we have to have a starting point on getting this case off of square one.

Now, I think the starting point is the order of January 4, 1990, whereby your client tells Mr. Snelbaker's client what the tax status of this business is so that we can determine what value, if any, that it has.

MR. CONLON: But that answer has been given. It was given to you, your Honor, by telephone conversation from Mr. Jones.

(15) THE COURT: No, sir. No, sir. I don't keep any records of telephone conversations.

MR. CONLON: Well, your Honor, as I understood it—

THE COURT: Nor am I a party. I am making the judgment on this whole thing as soon as we have a record—

MR. CONLON: As I understood it, there was, in fact, a court reporter present at that particular time, one Marie T. Farley, who I see present in court today, who was taking—

THE COURT: Taking down the phone conversation?

MR. CONLON: That was my understanding of it.

THE COURT: I don't think that is correct, sir. Is that correct, Marie?

COURT REPORTER: No, sir. No, sir, I did not take down any of the phone conversation.

THE COURT: You did not take anything down on the phone conversation.

COURT REPORTER: No, sir, I was just present in the room during the conversation, but I did not take it down.

MR. CONLON: If fact—can she be asked— (16) she is, in fact, subject to subpoena. Can she be asked under oath if she was, in ıact, present?

THE COURT: Sir, it doesn't make any difference.

MR. CONLON: It does make a difference.

THE COURT: You are making collateral and peripheral issues here when all I want to do is get the information on the record and then let you fellows argue what the meaning of the whole thing is.

MR. CONLON: I too want to get the information, the evidence on the record. And it really moves to the next schedule, if we can leave that for the moment, that is this, you have to determine with respect as to whether or not there was a decree absolute granted by you because it was you who granted it on May 8, 1988.

That is fundamental as to whether or not this matter can proceed. Otherwise, you have no jurisdiction with respect to that because what was remanded to you and the circumstances by the court on the 25th of September, the Supreme Court, was the tax consequences and basically the equitable distribution and the tax consequences which arise from that, on the basis of the decree absolute was granted on May 8th. Because the law clearly says

that unless the decree is absolute, and the divorce is final, no court has any jurisdiction to (17) have an equitable distribution.

Now, Mr. Snelbaker says that the other court—that, in fact, what we have here, that there is not a decree absolute in existence. And that is a ruling which you have to make. Otherwise, as you quite properly say, I am going to have to go to another court for them to determine it.

In any event, Monday's proceedings, or any proceedings subsequently, would have to be stayed until that matter is determined. And this thing is going to be—this thing is going to be stretched out even further because we have, on one hand, Mr. Snelboker—

THE COURT: Sir, you practice law and take such procedures as you think are necessary. That--what you do is of no consequence to me.

MR. CONLON: I entirely agree with your Honor.

Your Honor, with respect, I don't wish to seem an adversary to the Bench, it seems to me, with respect, that perhaps you and I have got off on the wrong foot here, and I would like to start again if that is the case. Because simply I am indicating to your Honor, as properly as I possibly can, what the law of this state seems to be to me.

Your Honor, I have tried to invite your (18) Honor to look at the law, to consider it. And it seems to me that, at this present point in time, you take a particular view. Is your Honor prepared to look at the law? Can I invite you to consider the authorities on it?

THE COURT: I will consider cases you want to present to me, sir, at the recess.

Now, I have this—

MR. CONLON: When you say the recess, what do you mean by that?

THE COURT: I mean at a recess off the record in my chambers I will look at any case you want me to look at, sir. But I am not going to continue to have oral argument between counsel. Because it is of no value to have a record of oral argument to me. I take a record of testimony, sir.

MR. CONLON: Well, your Honor, with respect, it is the duty of the court, it is my understanding, to take a record of also submissions of law. And I don't intend to get into any argument with my learned friend about any testimony, because this is not a matter where testimony is to be given, except on procedural matters. It is a submission. And any court is entitled to hear of as to whether or not it has jurisdiction.

My concern about this is that it is (19) improper for me to embark on a proceeding where there is some possible doubt that the court in which I am does not have jurisdiction. It is aiding and abetting that court to act on *ultra vires*. So, therefore, it is incumbent upon me as an officer of the court and counsel to point out to the court that what the situation is that there is certain legal authorities. Now, if your Honor wants to hear those—

THE COURT: Well, I thank you sir for your willingness to help the court, and I do appreciate that very much. And now I say that we have this matter of January 4, 1990, to get to so that both counsel can prepare for a meaningful hearing.

The first question is the tax status of J. Nevin White Lumber Company, whether it is a C or an S corporation, and the date of election, if it is an S.

And if there has been some sale of the corporation, I think that the plaintiff is entitled to know when and where and what the situation is, to get ready for trial so that these things can be evaluated in accordance with the Supreme Court's mandate to me.

MR. CONLON: Well, your Honor, can I invite your Honor to the case of Markle vs Sordoni, which is at Volume 64 of the District and County Reports at Page 424, 1948, which is specifically on the point—

(20) THE COURT: 1948?

MR. CONLON: Yes, your Honor, 1948. And it is still good law.

MR. SNELBAKER: What is the citation?

MR. CONLON: It is the District and County Reports, page 424.

MR. SNELBAKER: What is the volume?

MR. CONLON: The volume is 64, 1948, Pennsylvania—

THE COURT: 64 D & C.

MR. CONLON: Yeah.

THE COURT: Page 421.

MR. CONLON: 424, your Honor.

THE COURT: 424, 1948. Is there anything else you want me to look at?

MR. CONLON: Yes. I am sure you are familiar with the Pennsylvania Rules of Civil Procedure, Regulation 212, which refers—

THE COURT: You are saying R.C.P. 212.

MR. CONLON: Yes. And 21213.

THE COURT: I don't believe they go that high, sir.

MR. CONLON: Rule 212 and 213.

THE COURT: All right, I will be happy to look at those at the recess.

(21) Now, may I see a copy of my last order here?

MR. SNELBAKER: Yes, sir.

THE COURT: Now, I have scheduled a hearing on the Rule to Show Cause today and directed Mr. White to be present.

MR. CONLON: Your Honor, are you—are you saying that that is an order that you made on that day?

THE COURT: Yes, it is, sir.

MR. CONLON: And in accordance with the Rules of Civil Procedure—and because there are other authorities which I would like to cite to you.

THE COURT: Sir, that is enough. I have made an order, and we are going to at least get some preliminary matters out of the way.

Now, Mr. Snelbaker, have the questions you raised on January 4, 1990, been answered?

MR. SNELBAKER: No, sir.

THE COURT: And how do you propose to get answers to them?

MR. SNELBAKER: I propose to call J. Nevin White as on cross-examination in response to my subpoena which was issued earlier this week.

THE COURT: All right. Mr. White, would you take the stand, please?

(22) MR. CONLON: With respect, before he does, it is my submission that that subpoena has no authority at all whatsoever. And if he is to take the stand, then I would request a short adjournment in order to speak to my client.

THE COURT: Well, I will let you talk to him right now, sir, but it is an order and he is going to take the stand and tell us what this tax situation is.

MR. CONLON: If you forgive me one other matter, do I understand in your ruling you are saying that that subpoena is a valid subpoena?

THE COURT: Is what, sir?

MR. CONLON: The subpoena which was served upon my client by Mr. Snelbaker, do I understand you to say that that is a valid subpoena insofar as this court is concerned?

THE COURT: I don't know anything about whether it is valid or not. I know Mr. White is here in court, And we are going to get some questions answered.

MR. CONLON: Your Honor—

THE COURT: You have to wait until I finish, sir, before you talk. I wait until you finish before I say anything.

MR. CONLON: Of course. I am sorry. Please, finish.

(23) THE COURT: If You wish to say something to your client, go ahead right now.

MR. CONLON: There was another matter before I did. Your Honor, insofar as Rule 212 is concerned of the Rules of Civil Procedure, I anticipate that the court is aware of the fact that testimony with respect to these particular matters is not something which con be given by the defendant or any party to the proceedings at this particular stage.

THE COURT: Well, perhaps he can tell us that then, sir. But I—Mr. Snelbaker has asked a question, and he is here and we are going to have some questions.

MR. CONLON: I have invited your Honor to look at the particular case. Can I suggest that you read that case before, in fact, you take this particular course of action?

THE COURT: I said I would read it during the recess, sir.

MR. CONLON: Well, can I suggest we have that recess now? Perhaps your Honor's decision might be different.

THE COURT: Sir, do you hear what I am saying?

MR. CONLON: I hear perfectly well what you (24) are saying.

THE COURT: If you want an opportunity to talk to Mr. White, please take that opportunity right now and whisper to him. At the conclusion, he will be taking the stand.

MR. CONLON: Your Honor, I am most grateful. Thank you for that opportunity.

(Discussion held off the record.)

MR. CONLON: Your Honor, thank you very much indeed for that short moment. It was appreciated and Mr. White will now take the stand.

Whereupon, J. NEVIN WHITE called as a witness as on cross-examination, having been duly sworn, testified as follows:

CROSS-EXAMINATION

BY MR. SNELBAKER:

Q Give us your name and your address?

A J. Nevin White. 2311 North Front Street, Harrisburg, Pennsylvania.

Q Apartment number, please?

A 805.

Q With reference to J. Nevin White Lumber Company, Incorporated, are you familiar with that corporation, Mr. White?

(25) A Yes

Q As of this present time, can you tell us what the status of the corporation is for federal income tax purposes, whether it is a corporation which is popularly called a C corporation or an S corporation?

A A C corporation.

Q And how do you know that?

A That is just what it is.

Q And when did you learn that?

A I have known that.

Q You have known that?

A Surely.

Q A pleading was filed in this case by your counsel indicating that you were unable to provide that information because you were—you have no official capacity nor financial interest in J. Nevin White Lumber Company. Are you aware that that statement was filed on your behalf?

A The corporation was sold, yes.

Q Are you aware that the statement that I just referred to was filed or was stated on your behalf?

A Yes.

Q And I am referring to the document dated December 28, 1989, which I assume is a matter of record in these proceedings, signed—

(26) MR. CONLON: Can I be shown the document he is being asked about, please?

MR. SNELBAKER: Certainly.

MR. CONLON: If it assists my friend at all, I am happy to agree to any of these matters. I am just trying to help the court.

THE COURT: All right. Share the documents, that is enough.

BY MR. SNELBAKER:

Q Let the record show that I am handing, Mr. White, to you a document, with two counterparts, together with its envelope, which came purportedly on your behalf, dated December 28, 1989, and apparently mailed from Salisbury, Maryland, on December 29, 1989. Are you familiar with that document?

A Yes.

MR. CONLON: Can I have it, please, just to check it? Thank you.

Your Honor, for the record, I agree it is what it purports to be. Thank You.

BY MR. SNELBAKER:

Q So, if I understand this correctly, that on December 28, 1989, you knew on that date the tax status of the corporation, is that correct?

A December 28th?

(27) Q. Yes

A I am saying that I knew the tax—the tax—I am saying that I knew what the type of corporation it was. When I owned the corporation, it was a C corporation.

Q And you know that that is its status today?

A I do not know that.

Q I see. Now, why do you not know that today?

A Because I am not an officer.

Q Why are you not an officer?

A The corporation has been sold.

Q Can you tell us, please, how the corporation was sold?

MR. CONLON: Well, your Honor, that does not go to the order of your Honor.

MR. SNELBAKER: It does—

MR. CONLON: Your Honor, it does not.

THE COURT: It does, sir.

THE WITNESS: It was sold by an international attorney.

BY MR. SNELBAKER:

Q Well, tell me how it was sold? How was this corporation sold?

A The same as you sell anything.

(28) Q Well, tell us, what did you do?

A I didn't understand the question.

Q What did you do to sell it?

A I sold the stock.

Q And to whom did you sell the stock?

A To Euro-Ceramics Corporation.
THE COURT: Spell it, would you, sir?
THE WITNESS: E-u-r-o, Ceramics, C-e-r-a-m-i-c-s.

BY MR. SNELBAKER:

Q Is that the full name?
A To the best of my knowledge.
Q Were you served with a subpoena from my office through—issued by the court, I believe like Wednesday of this week?
A Yes, I was.
Q And that subpoena said that you were to bring with you all documents documenting your alleged sale of your corporate stock of and in J. Nevin White Lumber Company, did it not?.
A Yes, it did.
Q Would you produce them, sir, now?
A I do not have them.
Q Why do you not have them?
A My attorney has them in Miami.
(29) Q Okay.
MR. CONLON: Your Honor, I can assist by saying that they are in transit. As soon as he got them, we would undertake to deliver them to the plaintiff's in the circumstances, if that helps Mr. Snelbaker. The fact of the matter is they are still in transit.
THE COURT: What attorney is this, sir?
THE WITNESS: Leonard Binder,
THE COURT: Spell it.
THE WITNESS: L-e-o-n-a-r-d, B-i-n-d-e-r.
THE COURT: Address?
THE WITNESS: Honestly, I don't know the complete address at the moment.
MR. SNELBAKER: I know of this person having—this person having been in the case earlier, your Honor, and having been listed as, I understand, as a witness.

THE COURT: All right.
MR. SNELBAKER: I think I understand who that is.

BY MR. SNELBAKER:

Q When did this sale occur?
A In October.
Q Date?
A I believe the 27th, I am not positive.
(30) Q Is there a reason you are not positive?
A No.
THE COURT: What year?
THE WITNESS: 1989, sir.

BY MR. SNELBAKER:

Q Where did it occur?
A It occurred in my office.
Q The settlement occurred in your office at Duncannon?
A Well, the preliminary work was arranged in the office.
Q What is the address of Euro-Ceramics?
A Lisbon, Portugal.
Q What is the street address?
A I don't know.
Q By whom are you employed, Mr. White?
A The J. Nevin White Lumber Company.
Q And who issues to you whatever compensation you get?
A The company.
Q And who signs the checks?
A The president of the company.
Q And who is the president of the company?
A Mr. Jones.
Q What is Mr. Jones' name?
(31) A Roland S. Jones.
THE COURT: Is that the Mr. Jones seated at the table with Mr. Conlon?
THE WITNESS: Yes, it is, sir.

BY MR. SNELBAKER:

Q And how long has Mr. Jones been the president of this company?

A Since the sale of the corporation.

Q So he has been the chief officer of the company since October of 1989, right?

A Yes.

Q Okay. Now, what was the price for your stock?

A One million, three-hundred thousand dollars.

Q And where is the money for that?

A The agreement of sale is still with the attorney, Mr. Leonard Binder.

Q Where is the money?

A You will have to read the agreement of sale to determine that.

Q Well, you said it was sold. Sold means, to me, that you had an article, you gave it to somebody in return for money. And the money that you got for it, where is it?

(32) A I haven't received any money yet, sir.

Q Well, where is it?

A I haven't received it.

MR. CONLON: Well, your Honor, if you don't mind me interrupting, I apologize to Mr. Snelbaker, he is working on the mistaken presumption that money has, in fact, been paid. The defendant is explaining that there is a bill of sale, and that would explain the consideration in the circumstances. And it would be perhaps unfair to the defendant, and also unfair to Mr. Snelbaker, to proceed on the mistaken premise that money has exchanged hands.

THE COURT: Well, according to Mr. White, no money has exchanged hands although he sold something.

MR. CONLON: Exactly.

THE COURT: I would like to talk to Mr. White, or somebody in the courtroom later on, perhaps there is another sale such as

this around that I would like to buy it without giving any money. But anyway—

MR. CONLON: Consideration, not money, your Honor.

THE COURT: This is exploratory, so let's go ahead here. I think we get the idea that he doesn't have any money now, and Mr. Snelbaker wants to know why and where it is. It is legitimate.

(33) BY MR. SNELBAKER:

Q Does Mr. Binder have the money?

A No.

Q Does Mr. Jones have the money?

A No.

Q If neither of those have the money—and you are certain that they don't—who does?

A I told you, I haven't received any money for the sale yet.

Q Why not?

A Because of the nature of the sale.

Q Well, explain that. I have asked you to tell us what you did, explain the nature of the sale, sir.

A The sale is over a ten year period of—with promissory notes.

Q How many notes?

A To the best of my knowledge, ten.

Q Ten notes. How much are each of the notes?

A Let's see—I really don't remember.

Q Well, what is the interest rate on the notes?

A Ten Percent, I believe.

Q I take it you are not certain of that either?

A Relatively sure that is the case.

(34) Q Where are the notes?

A The attorney—I presume the attorney has them.

Q You are telling us you don't have them?

A I do not have them,

Q Now, the notes—have the notes been signed and delivered to your attorney?

A I can't answer that.

Q When do they come due?

A I can't answer that either.

Q Well, do you expect payment on one or more of the notes next week?

A No, sir.

Q Well, shall I go on? Next month, next year, when?

A I believe the first payment is due a year from now.

Q Second payment?

A A year from that.

Q What other consideration did you get for this sale other than some notes?

A No other consideration.

Q What stock did you sell?

A J. Nevin White Lumber Company stock.

MR. CONLON: Your Honor, it may help my (35) friend, that the difficulty here is all the documentation, as I said to you, is in transit. Now, we are not going to get any further because it sets out all these dates in details—

THE COURT: Well, maybe we won't. But I will entertain a few more questions.

MR. CONLON: I am obliged. As I said to you, once he has got it, then he can look at it and give all these answers to Mr. Snelbaker, which I would give to him in any event.

THE COURT: All right.

BY MR. SNELBAKER:

Q What stock did you sell?

A J. Nevin White Lumber Company stock.

Q How many shares?

A All the shares that were in the corporation.

Q How many are there—how many were there at the time of your sale?

A Off hand, I don't recall.

Q Did you change the number of shares that you owned from the time that we were in this divorce hearing, several years ago, to the present time?

A No, sir.

Q What assets did you retain out of the (36) corporation?

A None.

Q Did you retain anything like land?

A No, sir.

Q Do You have an employment contract?

A Well, I work for the corporation.

Q Do you have an employment contract?

A Not at this moment, no.

Q Is there one contemplated?

MR. CONLON: Your Honor, again, the answer is, yes, we have got the documentation coming to verify this. Perhaps—your Honor said you would allow one or two more questions—

THE COURT: I didn't mean that question so literally, sir. Some of this testimony is so amazing that it just leads to other testimony. So I am going to allow some more questioning here, sir.

BY MR. SNELBAKER:

Q Is there an employment contract in the works?

A Yes.

Q And what is the term of that contract, how long are you to be employed?

A Well, I guess as long as they want me to work for them.

(37) And what is the salary?

A Some salary as I have been earning.

Q What is the salary, Mr. White?

A Well, I believe it is $62,000.

Q Per year?

A Per year.

Q Does that change from year to year?

A No.

Q What benefits do you get as an employee?

A Same as any other employee.

Q And what are they?

A Blue Shield, Blue Cross.

Q Do they give you a car?

A Yes.

Q What kind of a car?

A A 1978 Continental with 385,000 miles on it.

Q What else do you get?

A Literally that is it.

Q Did you sell any of this stock to any person other than Euro-Ceramics at any time between the time that these hearings were held in this divorce case?

A No.

Q The one million, three-hundred thousand dollars that you say you are getting, do you have any (38) option to rescind that agreement?

A No.

Q Do You have an option to buy that stock back?

A No.

Q Who represented you in this negotiation?

A Leonard Binder.

Q And that is the some Leonard Binder that testified in the hearings earlier in this case, is that it?

A That is it.

Q Now, tell me, please, sir, who are the stockholders of Euro-Ceramics?

A I am sorry, I don't have that information with me.

Q Well, take a guess. Who are they, where are they, where do they live?

A They live in Portugal.

Q Okay. And who represented them in this proceeding?

A In—

Q In this sale?

A I am sorry, I can't tell you.

Q Well, you were dealing with someone across the table—

(39) A My attorney was dealing with somebody across the table.

Q I see. Did anyone else represent you in these proceedings to sell this stock?

A No, sir.

Q How about Roland Jones?

A Well, I can't answer that. I mean I dealt with Mr. Binder.

Q Well, did Mr. Jones serve as a consultant to you in these proceedings?

MR. CONLON: Your Honor, I will make that admission, the answer is yes.

THE COURT: Pardon me?

MR. CONLON: I will make the admission. What is the difficulty here? Yes, of course, he has indicated that in the past.

MR. SNELBAKER: I would note the reluctance of Mr. White to answer the question, and have that shown—

MR. CONLON: It is on the record. I can't see the difficulty here.

THE COURT: All right.

MR. CONLON: I tried to

THE COURT: Fine, it is not difficult to answer, sir.

(40) MR. CONLON: I have tried to indicate to the court and through the court to Mr. Snelbaker, all these questions will be answered, and we are quite willing to answer them. But if he persists in this, let him feel free—

THE COURT: All right.

BY MR. SNELBAKER:

Q How long did Roland Jones consult with you, over what period of time, in the sale of this company?

A A very short time.

Q Well, tell us what period.

A Well, maybe three or four months, something like that.

Q Who are the directors of the Euro-Ceramics Corporation?

A I told you, I don't know.

Q I didn't ask you before. I asked you now, who are the directors of the corporation?

A You did ask me before.

THE COURT: Do you know any of the directors, sir?

THE WITNESS: No, I do not know them, sir.

BY MR. SNELBAKER:

Q And why is it that you do not know who the directors are?

(41) A Because they are in Portugal.

Q Tell us, Please, who the officers are?

A The president is Roland S. Jones. The vice president is John J. Myers.

Q I am sorry?

A John J. Myers.

Q One of your employees?

A Yes.

Q Next.

A And the secretary is Sharon Burd.

Q Where does Sharon Burd live?

A In Perry County.

Q Is she an employee of the company also?

A Yes, she is.

Q Is she a full-time employee?

A Yes, she is.

Q Treasurer?

A I don't know that there is a treasurer at the present time.

Q Under what—under what law is this company organized, this Euro-Ceramics, under what state or national law is it incorporated?

A In Portugal.

Q What does Euro-Ceramics do? What is their business?

(42) A They are an international corporation.

Q Well, that doesn't tell me what they do. What do they do?

A They make ceramics.

Q Do they deal in lumber?

A They do now.

Q Now, how did you come to find Euro-Ceramics as a purchaser?

A Through my attorney.

Q And that was who?

A Mr. Binder.

Q When did you decide to put the company up for sale — or put your stock up for sale? I am sorry.

A Well, I would say in September.

Q September of 1989?

A Yes.

Q Did you mention the fact of your desire to sell the stock to Mrs. White, your wife, at any time?

A I did not.

Q What is your title with the company?

A Presently I am the manager, mill manager.

Q What are your duties?

A See that the logs are brought in and the lumber is produced and shipped out.

Q Are you doing essentially the same thing (43) for Euro-Ceramics as you did for yourself when you were the sole shareholder?

A Basically.

Q Do you continue to deal with your Bermuda trust entities that we have talked about in the past?

A No.

MR. CONLON: Your Honor, with respect, the Bermuda trust was ruled by the Supreme Court and Superior Court as not being pertinent to this particular tax consequence. The judge found there was a constructive trust and respect of any matters in Bermuda. I can't turn on exact page, but I see you are flicking through it now. But—

THE COURT: Refer me to the page in the Supreme Court—

MR. CONLON: If I have to, yes, of course, I will. If he wants to ask him questions, he can, I am just saying—

THE COURT: Just refer me to the page, sir.

MR. CONLON: Yes, just a moment.

Can I have a moment to find it, please, your Honor?

THE COURT: Yes.

MR. CONLON: Thank you.

MR. SNELBAKER: The very last page, the (44) last full paragraph, I believe.

MR. CONLON: I am grateful to my learned friend. I can't go above that, That is what it says. It is a constructive trust, and it doesn't fall into the tax consequences.

MR. SNELBAKER: Beginning at page nine, the middle of the page, the court discusses this, and I believe it concludes that you did not abuse your discretion in assigning o constructive interest to the—

MR. CONLON: Next, the appellant argues the trial court abused its discretion—

THE COURT: You don't have to read it, sir. You are saying that I don't have anything to do with the Bermuda trust anymore?

MR. CONLON: No, no. What I am saying, insofar as the tax consequences are concerned, it is my submission that the meaning from Judge Tamilia in his judgment here—

THE COURT: That is Superior Court. I am talking about the Supreme Court opinion.

MR. CONLON: Well, the Supreme Court obviously adopted the judgment of Judge Tamilia with respect—see, what happened—

THE COURT: Do I have anything to do with the Bermuda trust or not?

(45) MR. CONLON: Insofar as the tax consequences are concerned, no, not anymore—

THE COURT: Sir—

MR. SNELBAKER: I think as long as this case is here and the equitable distribution is before the court, I think this is all relevant.

I think we have to know what is happening to the assets, which are being obviously dissipated by this defendant in the course of this, still in litigation.

And one of the things I am concerned about is we know, and the Superior Court affirmed, that there were business transactions with Bermuda entities. And I am still wanting to know what has happened and what is going on with them at the present time.

MR. CONLON: Well, your Honor—

THE COURT: Well, just because your client wouldn't answer these questions before, Mr. Conlon, doesn't mean that they are not valid.

MR. CONLON: Well, your Honor, I am not saying that he won't answer the questions. With respect to Mr. Snelbaker, he seems to be leading this honorable court through a legal mine field, with respect. Because Judge Tomilia clearly says—and I hope that Mr. Snelbaker understands the consent of a constructive trust—

(46) MR. SNELBAKER: It doesn't say that.

MR. CONLON: Let me finish. Please, don't interrupt.

MR. SNELBAKER: Well, when you are wrong, I am going to object.

THE COURT: Gentlemen, gentlemen, please. I think we have a question for the witness and I don't have an answer yet.

MR. SNELBAKER: Yes.

THE COURT: Now, let's have the question again, and let's have an answer then, Mr. White.

MR. CONLON: And the Bermuda trust, as far as your Honor is concerned, is relevant in tax consequences.

THE COURT: I am going to move this along. There is obviously going to be an argument to me later on that there is a serious dissipation of assets in this case. The Supreme Court accepted my valuation of this company at 2.7 million dollars. This man now says he sold it for 1.3 million dollars.

There are starting to be some questions raised, Mr. Conlon, about what is going on. Let's have your question, Mr. Snelbaker.

BY MR. SNELBAKER:

Q My question was essentially are you dealing (47) with Bermuda entities in your present position as manager of the company?

A No.

Q Are you dealing with the Bank of Nova Scotia as in your position of manager of the company?

A No.

Q Where is the depository of funds for your business now—or the business?

A The Juniata Valley National Bank, Mifflintown, Pennsylvania.

Q Are any funds deposited anywhere except at that bank?

A No.

Q Are any funds diverted, that is from customers to other locations?

A No.

Q Who is your supervisor?

A The president of the corporation, Roland Jones.

Q And do I understand that you have engaged Roland Jones, either directly or through Mr. Conlon, to assist you in your proceedings here in this case that we are hearing today?

A Yes, that is right.

Q So he is serving as an adviser to you on (48) the one hand and your boss on the other, is that right?

A That is right.

Q Okay. How is it that Mr. Jones became the president of this company?

A It was the wishes of the new corporation that bought the corporation.

Q Does Mr. Jones have a financial interest in the corporation?

A I can't answer that.

Q Does he get—does he have a salary?

A I can't answer that either.

Q You don't know?

A I don't know.

Q So if I ask you what amount, if any, he was paid, what would be your answer?

A I can't—I wouldn't know.

Q Have you been to Portugal?

A No, sir—yes, I have, years ago.

Q In connection with this transaction, have you been to Portugal?

A No.

Q Has Mr. Jones or any of the other officers of the company been to Portugal in connection with this transaction?

A No.

(49) Q Is Mr. Conlon involved in representing your interests in connection with this sale?

A What is the question?

Q Is Mr. Conlon, your attorney here today, representing your interests at all in connection with the sale of the stock to Euro-Ceramics?

A No.

Q In the course of making this sale, how did you come to the price that you say you sold it for?

A I was offered the million, three-hundred thousand dollars, and I accepted it.

Q Are we to understand from your answer that there was an offer made and accepted, just like that?

A That is exactly right.

Q And do I understand you made no counterproposal?

A No, I did not.

Q You made no counterproposal, is that correct?

A That is correct.

Q And how was that proposal communicated to you?

A Through my attorney, Mr. Binder.

Q Did you discuss the appropriateness of that number with Roland Jones?

(50) A Well, yes, I imagine I did.

Q And when did you get that proposal?

A I do not—I can't answer that right now.

Q Well, now, you said you thought about selling it in September. You sold it in late October. Did that help you?

A Yes.

Q When did you get the proposal?

A I can't remember, I am sorry.

Q Did it come by letter, telephone?

A It came by letter.

Q By letter.

A Uh-huh.

Q And you have that letter?

A No, I don't.

Q Where is the letter?

A It is with the attorney in Miami.

Q He wrote a letter addressed to you, and he now has that letter, is that what you are saying?

A I think maybe he has it.

THE COURT: Who is the he?

THE WITNESS: The attorney.

THE COURT: Name?

MR. CONLON: Binder, your Honor.

THE WITNESS: Mr. Binder.

(51) MR. CONLON: In Florida.

BY MR. SNELBAKER:

Q Is there a reason why you gave your personal correspondence to him?

A No particular reason.

Q Was it so that it wouldn't be here and available to be attached or subpoenaed in this court?

A No.

Q How did that document get from here to there?

THE COURT: Miami?

MR. SNELBAKER: Well, yes, from Pennsylvania to Florida.

BY MR. SNELBAKER:

Q How did it get there?
A By mail.
Q When did you mail it?
A I don't remember.
Q Yesterday?
A Oh, my, no.
Q Who is the accountant for J. Nevin White Lumber Company?
A At the present time, I really don't know.
Q At the time—
THE COURT: Sir, sir, you are running the (52) company, aren't you?
THE WITNESS: Yes, sir.
THE COURT: Well, who is your accountant?
THE WITNESS: Well, the accountant was Tom Clark.

BY MR. SNELBAKER:

Q Thomas Clark, from where?
A Mifflintown.
Q Mifflintown. Is he still there?
A Well, I presume he is still going to keep on doing the books. I am not positive of that.
Q Well, do you deal with him?
A From time to time, yes.
Q So then he is the accountant for the company, is that right?
A That is right.
Q Is he also your personal accountant?
A Yes, he is.
Q Have you discussed the matter of the sale of the stock with Mr. Clark?
A Yes, I have.
Q And did he review the document?
A Yes, he has.

Q Does he have a copy of those documents?

A Pardon me?

(53) Q Does he have a copy of the documents in which you sold your stock to Euro-Ceramics?

A No, he doesn't.

Q Why would he not have a copy of them?

A Well, you asked had he reviewed some of the work, and I said yes, he had.

Q As your personal accountant, You would certainly like him to have copies of the documents, would you not?

A Well, I am sorry, I don't have any copies of the documents.

Q I am asking whether he does, sir.

MR. CONLON: We are still waiting for them. We explained already. I am sorry to keep interrupting, but it is obvious—

MR. SNELBAKER: It is certainly not an objection, and I am going to ask that counsel be admonished—

THE COURT: Now, all right. That is enough from both of you. Do you have a question for him?

Where are these documents and why haven't you given them to your CPA? He has to prepare your tax returns.

THE WITNESS: Oh, your Honor, they are in the process of being sent to us now.

(54) THE COURT: Your tax return for 1989?

THE WITNESS: My tax return for 1989?

THE COURT: You have to file one, I think, don't you, sir?

THE WITNESS: I will have to, yes.

THE COURT: Who is going to do that?

THE WITNESS: Mr. Clark.

THE COURT: Mr.—

THE WITNESS: Tom Clark.

THE COURT: Of?

THE WITNESS: Mifflintown, Pennsylvania.

THE COURT: Have you given him these documents to help you fill out the return?

THE WITNESS: He knows—he knows of the sale of the corporation.

THE COURT: Sir—

THE WITNESS: But he doesn't have the documents, no.

THE COURT: When are you going to give him the documents so he can help you, sir?

THE WITNESS: As soon as they come from Mr. Binder.

THE COURT: Oh, okay—

BY MR. SNELBAKER:

Q Who is the accountant for Euro-Ceramics?

(55) A At the present time, I don't know.

Q Does Euro-Ceramics maintain an office in the United States of America?

A Not to the best of my knowledge.

Q Can I buy stock in Euro-Ceramics?

A I don't know.

Q Do you own stock in Euro-Ceramics?

A No.

Q Are you to get stock in Euro-Ceramics?

A No.

Q At the time that you negotiated for the sale of your stock, did you inquire into the financial ability of Euro-Ceramics?

A I understand they are a very sound company.

Q The answer—the question is did you inquire?

MR. CONLON: He has answered it. Well, he has answered it, your Honor.

THE COURT: Did you inquire, sir, yes or no?

THE WITNESS: Yes.

BY MR. SNELBAKER:

Q To whom did you make the inquiry?

A My attorney, Leonard Binder.

Q Did you receive information, which I will (56) classify as a financial statement, similar to the ones which you have received from time to time from your accountant? Did you receive such documents from Euro-Ceramics?

A No, I didn't.

Q Did you at any time make an examination of any financial records, public or private, of Euro-Ceramics?

A No.

Q Now, just let me get this straight, you sold all of your interest in J. Nevin White Lumber Company for a million, three-hundred thousand dollars, and you never saw a paper from the buyer, is that correct?

A You mean a financial statement?

Q Yes, sir.

A That is correct.

Q Who would have saw those papers?

A Well, I presume Mr. Binder would have seen them.

Q You presume that?

A Yes.

Q Never asked him?

A All I know is that Mr. Binder said they are a very sound company and they do business in South Africa and Portugal, and they were a good company so—so that (57) is all I can tell you.

Q Did Mr. Jones see financial statements of Euro-Ceramics?

A Not to the best of my knowledge.

Q And he was advising you to go through with this transaction?

A Yes, yes, sir.

Q What is your brother's name in the lumber business?

A Ray, Raymond E. White.

Q Is he still in the lumber business?

A Yes, he is.

Q Does Raymond White have any connection with Euro-Ceramics?

A Not to the best of my knowledge.

Q Does he know about your transaction with Euro-Ceramics?

A Not to the best of my knowledge.

Q You have not talked to him about it?

A No.

Q Going back to the Bermuda trust, or whatever those entities are or entity is, that we had talked about earlier, in the earlier part of the hearings in the divorce case, does that entity or those entities own stock in Euro-Ceramics?

(58) A No.

Q Then how do you know that?

A Well, to the best of my knowledge, they don't.

Q Are those interests, those Bermuda entities still operating?

A Which entities are you speaking of?

Q Well, any of them. We talked about at least two that I recall back then.

MR. CONLON: Can we be specific, please, your Honor? You know, can Mr. Snelbaker be specific about his question?

MR. SNELBAKER: If you have an objection, please, state it. I think we are all dealing with the question

MR. CONLON: It is not an objection. It is just simply—

MR. SNELBAKER: We are all dealing with the subject matter of the entities that you referred to in the prior testimony in this case.

THE WITNESS: Oh, all right. Now, ask the question again, sir, and I will give you an answer.

BY MR. SNELBAKER:

Q Do any of those entities own stock in Euro-Ceramics?

(59) A No.

Q And how do you know that?

A Well, I am not positive, but to the best of my knowledge, they do not.

Q Do those same Bermuda entities continue to exist?

A Yes.

Q And you still continue to have dealings with them personally, you, J. Nevin White?

A I don't know how to answer the question, I am sorry.

Q Very simple. Yes or no, do you continue to have transactions or dealings with those entities in Bermuda?

A Well, if you mean do I deal with my brother, yes, I do deal with him.

Q And who is your brother?

A Raymond White.

Q And where is Raymond White—how is Raymond White connected to Bermuda?

A Through his foreign corporations.

Q And what are his foreign corporations?

A Lumber, Limited and Hardwood Lumber.

Q And where are they located?

A In Bermuda.

(60) Q What about White Timber, Limited?

A It is also located in Bermuda.

Q Now, do you have dealings with those several entities that you just named?

A Well, if it is necessary, there are times when that happens, yes.

Q All right. Tell us what happens, what do you do?

A Well, if I sell a load of lumber to my brother and it goes to Canada, it may go through one of the foreign corporations. Same as I deal with any other foreign corporation, in Canada or anywhere else in the world.

Q Do you go to Bermuda to participate in any of these transactions or dealings?

A No.

Q When was the last time you were in Bermuda to deal with these entities?

A I can't recall.

Q You were there during the course of the hearings in the original divorce proceedings, were you not?

A Yes, I was.

Q Have you been there since?

A In a business line, no.

(61) Q Pleasure line?

A Yes.

Q And how many times were you there for so-called pleasure?

A Once, I guess.

Q And when was that?

A Oh, I believe it was in November of last year.

Q November of 1989, is that correct?

A Uh-huh.

Q Just about the same time you sold the company, is that it?

MR. CONLON: No—

BY MR. SNELBAKER:

Q Is that right?

A I sold it in October.

Q Right. This was a month later, is that correct?

A Yes, I guess.

Q How long were you in Bermuda?

A Four days, I believe.

Q Did you talk to any of the people that are involved in these Bermuda entities while you were there?

A No, sir.

Q Who was with you in Bermuda?

(62) A A personal friend.

Q Who?

A Virginia—

THE COURT: A girlfriend?

THE WITNESS: Yes.

THE COURT: All right.

THE WITNESS: Must I answer that, sir?

THE COURT: Your girlfriend, if that is who it was. You don't have to say her name. I don't care.

THE WITNESS: Thank you.

BY MR. SNELBAKER:

Q I will ask you, what was her name?

MR. CONLON: With all due respect, that is prejudicial and it is not relevant.

MR. SNELBAKER: It may be important to subpoena her at a later time, just to verify what is going on here.

MR. CONLON: Oh, I see, that is the purpose of it. Is your Honor going to allow it?

THE COURT: All right. I don't see that it is harmful. What is her name?

THE WITNESS: Virginia Anderson.

THE COURT: I am going to take a short recess since it has been over an hour. But the questioning is not over for you, Mr. White, so don't go (63) anywhere. I suspect at some point Mr. Snelbaker will be asking for business records or documents of some kind.

During the recess, while I have other things to do, if you do have requests such as that, Mr. Snelbaker, write it out and mention it to Mr. Conlon, and then we will take that up when I get back in.

MR. SNELBAKER: Just so that I can respond to that on the record, my subpoena is the same thing which I had asked originally and which was requested in the telephone conference at the time that we were in court.

THE COURT: All right.

MR. SNELBAKER: So I am going to refer him to a letter I wrote Mr. Conlon as well as the subpoena itself.

MR. CONLON: Your Honor, just before you go, can I just mention this? It might be that my learned friend needs more time. I would invite the court to consider that perhaps Monday would—another date would maybe be more suitable.

THE COURT: We will worry about that later. We are taking a recess now, and there will be more questions for Mr. White in a few minutes. We are now in recess.

(Whereupon, a recess was taken.)

MR. SNELBAKER: If the court please, in (64) response to Your Honor's direction, let the record show that I am herewith handing to Mr. Conlon a photocopy of a letter which I had sent to

him under date of January 19, 1990, which requests the documents concerning the sale.

I am also handing to him a handwritten document, which at this point is incomplete, but in this point requests that all tax returns and financial statements of J. Nevin White Lumber Company continuing from those in evidence already in this case through the date hereof, employment agreement with Euro-Ceramics, non-compete agreements with Euro-Ceramics, financial statements of Euro-Ceramics from January 1, 1989, to date, together with all the documents concerning the sale of stock, including all consultant's reports, fairness opinions, negotiating materials, correspondence, agreements, notes, et cetera.

MR. CONLON: Would you take that, please? Mr. Snelbaker? Can I hand you that? I served it on you—

I am grateful for this, and, of course, as I said before, as soon as we have all the documentation from Mr. Binder, we can take matters further.

THE COURT: When do you expect to have that, sir?

MR. CONLON: Mr. Binder has undergone heart (65) surgery, and I understand he is sending it this week. So it should be here within seven days, I would think, your Honor.

Your Honor, I can't state it more firmly than this, we are happy to put all this documentation to the Plaintiffs. It is just a matter of it arriving. It has not arrived because Mr. Binder has been ill, and I am sure, if necessary, that will be supported by medical certificates or whatever,

THE COURT: All right. Is Mr. Binder in the hospital at present?

MR. CONLON: He was—on Tuesday, he was in the hospital and he was leaving that day.

THE COURT: What hospital was he in, sir?

MR. CONLON: Somewhere in Miami. Tallahassee. Tallahassee.

THE COURT: What hospital was that?

MR. CONLON: I don't know. I didn't speak to him. Mr. Jones spoke to him, and I imagine he would have the telephone number.

That could be easily obtainable, and I am sure it can be checked out.

Your Honor, there is no mystery behind this, The man is in a hospital and, if necessary, in due course—it seems Mr. Snelbaker is going to subpoena him, And I am sure he will just confirm that in due course.

(66) MR. SNELBAKER: He is going to be here on Monday?

MR. CONLON: He is not going to be here on Monday.

MR. SNELBAKER: You said he was.

MR. CONLON: No, no, we said he might be here on Monday. The fact of the matter here is, as for as these matters are concerned, this pretrial conference is to ascertain exactly what it is insofar as procedural matters are concerned for the hearing.

THE COURT: Well, I agree with that to a certain extent, and we are going to mop up some ground rules at the conclusion of this testimony. But I merely wanted to find out where Mr. Binder is today, if you know.

MR. CONLON: As far as I understand it, he is at home. Because he is recovering from this operation.

THE COURT: Where is his home, sir?

MR. CONLON: Well, your Honor, I don't know. I can't give evidence. Perhaps Mr. White might know. I think—can I ask Mr. White?

Do you know his address?

THE WITNESS: I may have it in my book. Just a minute.

MR. CONLON: He is in Miami recuperating I am told.

(67) THE WITNESS: No. I have his phone number, but I don't have the address.

MR. CONLON: Would you give it to the court so, if necessary, the court can contact—

THE WITNESS: Yes. It is 305-374-2212.

THE COURT: Mr. Conlon, perhaps your associate, Mr. Jones, knows Mr. Binder's address. Could you ascertain if that is true or isn't?

MR. CONLON: We might be able to find it in the documentation that we have with us, your Honor. But as Mr. Snelboker—

THE COURT: I would appreciate that, sir. All right, let's get back to questions for Mr. White.

MR. CONLON: Mr. Snelboker knows it anyhow.

BY MR. SNELBAKER:

Q Mr. White, as part of the sale of your stock, have you negotiated a non-competition agreement with Euro-Ceramics?

A No. I don't even know what that means, but—can you explain that to me?

Q Have you entered into any kind of agreement by which you will get any future benefits beyond the notes?

A No.

MR. SNELBAKER: Those are all the questions (68) I have of Mr. White. I do intend to call Roland Jones.

MR. CONLON: Well, your Honor, I don't think I would agree—I don't have any examination of Mr. White. And can I ask upon what basis Mr. Jones is being called?

MR. SNELBAKER: As president of the J. Nevin White Lumber Company, and obviously would have all of this knowledge and obviously has had all this knowledge.

THE COURT: I think that Mr. Jones could help us on this, sir. After all, we are only trying to establish the value of this company. And I think that is a reasonable proposition. But, anyway, did you have anything you wanted to put to your client?

MR. CONLON: Your Honor, yes, perhaps just one or two points.

EXAMINATION

BY MR. CONLON:

Q You say that the sale of the corporation, it took place late September. Was that after the judgment of the Supreme Court?

A Yes.

Q And have you throughout—have you throughout taken counsel's advice as to what steps should (69) be taken in respect to these matters?

A Yes, I have.

Q That counsel has been from myself, Mr. Jones and Mr. Binder, is that right?

A That is correct.

Q Have you sought in any way to mislead this court?

A No, I haven't.

Q The documentation that you will have presently from Mr. Binder, would that be of assistance to you in giving evidence at a later date?

A Yes, it would.

Q And that particular agreement, was that arranged by Mr. Binder?

A Yes, it was.

Q In consultation with Mr. Jones?

A Yes.

Q Now, the price which was paid, how was that reached? Was that reached as a result of the market value at the particular time?

A I would say so, yes.

Q Now, insofar as other matters are concerned, mention was made earlier that there is a support action in Dauphin County. You are aware of that, aren't you?

(70) A Yes.

Q Now, for the purposes of that, is it correct that a certain amount of documentation was provided to the divorce—to the support division of that court in respect of your tax returns?

A Yes.

Q And that was made available to the court when requested, and, in fact, was made available to the petitioner, is that right?

A That is right.

Q And has it been your understanding that, in fact, the divorce decree granted by the Honorable Judge in this court, Judge Hoffer, was a final decree?

A That is what I understood.

MR. CONLON: Your Honor, thank You. I don't have any more questions in re-examination, unless Your Honor has any.

THE COURT: All right. Thank you, sir. You may step down.

MR. CONLON: Well, your Honor, could I just say insofar as Mr. Jones is concerned that I see the force in what your Honor says, but I repeat what I said at the outset, this is not a basis upon which testimony con be given, in any event, in respect of any matters which are of their probative value.

(71) In other words, if you are testing somebody's evidence as to its probative value, as Mr. Snelbaker seeks to be tending to do—in other words, I give you the example that we will have to subpoena your girlfriend to see whether or not you were, in fact, in Bermuda, that goes to probity.

Then it is clearly against the principals set out in Rule 212, and also the case which I referred your Honor to that you are going to read later.

THE COURT: I don't want to get too deeply into this, but this hearing is in the nature of an exploratory hearing to find out what evidence is going to become relevant at the valuation hearing. And obviously the plaintiff needs some documents, and perhaps Mr. Jones can shed some light on that. So, Mr. Jones, would you—

MR. CONLON: Your Honor, may I have one moment?

THE COURT:—take the stand, please?

MR. CONLON: Can I have one moment, please?

THE COURT: Certainly, sir.

MR. CONLON: Your Honor, the address, Mr. Binder's address, can I hand it up to you?

THE COURT: Just read it for the record. I don't personally want any of these things myself.

MR. CONLON: Well, Mr. Snelbaker already (72) has it, as I understand it. It is Leonard F. Binder, Esquire, 501 Blairstone Road, Apartment 204, Tallahassee, Florida, 323019.

You have got the telephone number, haven't you, sir?

MR. SNELBAKER: Yes, sir.

Whereupon, ROLAND S. JONES called as a witness as of cross-examination, having been duly sworn, testified as follows:

EXAMINATION

BY MR. SNELBAKER:

Q Give us your name and address, please?

A Roland S. Jones. Route 11, Salisbury, Maryland.

Q Are you president of J. Nevin White Lumber Company?

A I am.

Q Am I correct that you have been president since some time in October of 1989?

A That is correct, yes.

Q And do I also understand that you have been a consultant to Mr. White individually and in connection with the sale of his stock to Euro-Ceramics?

A I was not a consultant specifically for (73) that purpose. I have consulted with his firm for well over a year and a half.

Q Now, Mr. White said that you advised him in connection with the sale of his stock.

A In some areas of that, yes, yes.

Q And that was beginning when?

A Well, the first consideration I suppose was perhaps the end of August, early September. At least that is the first that I knew about it.

Q What is the correct name of the corporation that now owns J. Nevin White Lumber Company?

A It is Euro-Ceramica, S. A. And that is spelled E-u-r-o hyphen C-e-r-a-m-i-c-a, I believe, S. A.

Q What does S. A. stand for?

A I really don't know. It would be approximately an incorporated if it were in America.

Q Under what law is it incorporated?

A I really have no idea. I would assume under Portuguese law.

Q What is its address?

A I do not know what its address is. I have no idea what its address is.

Q Well, it has a business address?

A Oh, certainly.

Q And you as President deal with somebody. (74) What is its address?

A I have no idea what the address is. I always deal with him by phone.

Q And what is its telephone number?

A I have no idea. You have to go through an interpreter, because none of the principals speak English.

Q And have you met the principals?

A No, I have not. The family is the Dacosta family. And it is an individual and a nephew, I believe.

Q Dacosta?

A Yes, D-a-c-o-s-t-a.

Q Now, in your duties as president—and I assume from that that you are dealing with some corporate officers of the parent company—am I correct in that, that you deal with somebody?

A Well, in a sense, Mr. Snelbaker, you could say so. Perhaps some background as to how that election took place may shed some light on it.

Q Well, not really. I want to know with whom you transact business on a day-to-day basis as the chief executive officer of this company?

A I do not deal on a day-to-day basis. I have general guidelines as to how that company is to be run, and therefore in that capacity carry that out to the best of my ability.

(75) Q And what are your duties in general terms?

A In general terms, in charge of finances, in charge of obtaining financing, attempting to bring the corporation into a profitable posture. Inasmuch as it was not when they purchased it.

Q How long have you been so engaged?

A So engaged in what capacity, sir?

Q In that capacity that you just enumerated these are the things you do?

A Are you speaking of the capacity as president?

Q I don't know what your capacity is. But you said you deal with financing and profitability. When did you start doing those items?

A Well, when the election took place and I become president of the corporation.

Q Fine. When was that?

A That was October 28th, I believe. The company was sold on October 27th, and that election took place the following day.

THE COURT: 1989?

THE WITNESS: 1989, sir, yes.

BY MR. SNELBAKER:

Q After that you dealt with the corporation? You have been dealing with them since October 28th then?

(76) A What corporation?

Q Euro-Ceramics.

A What do you mean dealing with?

Q Please, I am asking the questions. Do you deal with Euro-Ceramica, do you have correspondence, communications with them?

A I have no correspondence with the firm at all.

Q Do you talk with them by telephone?

A I talk with their representative in the United States.

Q And when did you learn that you had been elected president?

A October 28th at 10:30, 11 o'clock in the morning.

Q Do you recall a telephone conversation which you had with his Honor, Judge Hoffer, and myself on January 19, 1990?

A January 19, '90, yes, I do.

Q In that conversation you did not know the name of the corporation, do you recall that?

A And I did not know the name of the corporation until I researched it, where—yes, that is correct. I knew the Dacosta, but I did not know the specific name of the corporation.

(77) Does Euro-Ceramica have a business representative in the United States of America?

A A business representative? Other than my representation, which is not—is specifically for J. Nevin White Lumber Company, not to my knowledge.

Q Who are the attorneys that dealt with your company at the time that Mr. White sold his stock, that is the attorneys who represented Euro-Ceramica or the Dacosta family?

A I do not know who represented them. I only know Leonard Binder represented J. Nevin White Lumber. And I dealt specifically with Mr. Binder. I was not specifically involved in the settlement per se.

I had made certain recommendations to Mr. White, and on the 28th, the day following the sale, a call was received from Mr. Binder saying they had changed their mind as to the corporate officers. And as to the directors, as a matter of fact.

Q Well, who are the directors, sir?

A I have no idea. They are not—they are not American. They are Portuguese.

Q What are the duties of John Myers, Vice President?

A John Myers is in charge of operations. That is the employees of the mill, the manual operation of (78) J. Nevin White Lumber.

Q Well, what are his duties as vice president?

A Vice President of Operations.

Q In other words, if he can't work, can't do something, or if you are incapacitated in some way, John Myers takes over for you, is that right?

A I suppose he would, since he has been there the longest of any employee there. Yeah, I would suppose so.

Q Now, can you tell us why J. Nevin White is not vice president?

A Why he is not vice president?

Q Yes.

A No. You would have to ask the Dacostas. Because initially Mr. White was to be President and also director of the firm.

Q Where does the Dacosta family—where are they located?

A In Portugal.

Q Where in Portugal?

A I have no idea. Mr. White said Lisbon, and maybe that is correct, I do not know.

Q What is your salary with Euro-Ceramica?

A I am not paid by Euro-Ceramica.

(79) Q Then by J. Nevin White Lumber Company?

A I am paid on an hourly basis.

Q What is that?

A That is $50.00 an hour.

Q Do you also have your expenses covered, such as travel?

A I do indeed.

Q And how many days per week do you spend at the facilities at Duncannon, Pennsylvania?

A Oh, it varies. I am always there at least one day a week, and many times two days a week. And speak with Mr. White almost on a daily basis by phone.

Q At the time that Mr. White was considering the sale of the stock to Euro-Ceramica, did you review the financials of Euro-Ceramica?

A I discussed those extensively with Mr. Binder.

Q The question is did you review them?

A Well, that is what I am saying, I reviewed them with Mr. Binder, yes.

Q So you saw them?

A I didn't say I saw them. I said I reviewed them. Quite frankly, I have a difficulty in interpreting Portuguese.

Q With whom did you work in translating them?

(80) A With Mr. Binder's wife.

Q Mr. Binder's wife.

A Yes.

Q Is she a translator?

A No, but she is Portuguese, as I understand. I have not met the lady.

Q What is her maiden name?

A I have no idea. I have never met the lady.

Q Would it be Dacosta?

A I haven't the slightest idea.

Q Do you have idea how long Mr. Binder has been married to this wife?

A No, sir. I know nothing about his personal life.

Q Are you aware that there are employment contracts for the corporate officers?

A Are there employment contracts for the corporate officers?

Q Yes.

A Not for the corporate officers, no. Both of the officers are employees of the company, but I know of no contracts, no.

Q Is Mr.—does Mr. White have an employment contract?

A As I recall, there is an employment section (81) in the purchase agreement for Mr. White.

Q Has Mr. White agreed not to form any competing entity or to work for any competitor?

A There are non-competition clauses in the agreement, as I recall in discussions.

Q What was the price paid by Euro-Ceramica for this stock?

A I am told it was 1.3 million dollars.

Q And you were told that by whom?

A By Mr. Binder and by Mr. White as well.

Q Have you seen the documents in this matter?

A I have requested the documents. I have not seen them.

Q I am going to show you a copy of a letter which I sent to Mr. Conlon, ask whether you have seen that document in the past.

A I have indeed, yes.

THE COURT: Have not?

THE WITNESS: I have, sir, yes.

MR. SNELBAKER: I am going to ask that this be marked.

(Whereupon, Plaintiff Exhibit No. 1 was marked for identification.)

BY MR. SNELBAKER:

(82) Q Showing you what has been marked as Plaintiff's Exhibit 1, and ask you if that is a document that you have seen?

A Yes.

Q Yes?

A Yes.

Q Would I be correct that you would have seen that shortly after its date, during the month of January of this year?

A I would assume so.

MR. SNELBAKER: Move for its admission.

THE COURT: Well, this is more in the nature of a deposition than anything else.

MR. SNELBAKER: Right.

THE COURT: Well—

MR. SNELBAKER: I ask that it be incorporated in the record. I have no other questions.

THE COURT: Do you have a copy of it?

MR. CONLON: He has already shown it. I take exception to it.

THE COURT: You said what?

MR. CONLON: I have already seen the document. It is about the 19th he sent to me about certain documentation with respect to J. Nevin White Lumber Company, which is addressed to me at the address in (83) Maryland that I have already given the court. I have read it. I accept it for what it is. Whether it takes matters any further is a matter for you to decide.

THE COURT: All right.

MR. CONLON: Did I hear my friend say that was the end of his questions?

MR. SNELBAKER: It is.

MR. CONLON: Might I just ask him one or two points on re-examination, your Honor?

THE COURT: Are you done?

MR. SNELBAKER: Yes, I am.

THE COURT: Oh. All right.

MR. CONLON: I thought that is what he said.

THE COURT: I consider this more in the nature of a deposition today than I do much of anything else. Although not that a deposition can't been used at a trial of the case, but nevertheless, go ahead, sir, if you have something to ask.

MR. CONLON: Your Honor, I repeat what I put on record before, that I don't consider that this is the proper course. But in the auspices of that exception, I would like to ask him a couple of questions.

THE COURT: Go ahead, sir.

(84) EXAMINATION

BY MR. CONLON:

Q The financial position of the J. Nevin White Lumber Company prior to the sale to Euro-Ceramics, can you help the court with that? Was it a healthy one or was it a—

A No. That was one of the reasons that I came on board about a year and a half ago. Because the corporation was losing money, enormous amounts of money.

I had suggested for several months prior to September that Mr. White consider selling before the value had decreased further.

The last fiscal year, as I recall, the corporation lost about $200,000.00. And I told Mr. White this could not continue indefinitely.

Q And the particular actions which have now come to an end, and the matter has been remanded to his Honor's court and the circumstances, did that have any bearing upon the viability of the corporation, the financial viability of it that you just spoke of?

A Did that which was remanded back have any viability—

Q There was an ensuing appellate matter going on at the time. Did that have any bearing as to the financial aspects of the corporation at all? Was it (85) something which was more marketable or less—

A I think would certainly have been less marketable. There were several factors. That was one.

Q What were the others?

A The losses.

MR. SNELBAKER: I am sorry, I didn't hear what the first one was.

MR. CONLON: The first one was the marketability—the litigation that was in process at the particular time.

MR. SNELBAKER: What litigation?

MR. CONLON: Well, the appeals.

MR. SNELBAKER: In this case? This case?

THE COURT: I think you are referring to the appeal on this case, aren't you, sir?

MR. CONLON: Your Honor, I am. I thought it was apparent. But I explained it in simple terms to Mr. Snelbaker, he doesn't understand it.

MR. SNELBAKER: It is very simple—

THE COURT: Please, I don't want anymore of this between counsel. I don't need it. Question?

MR. CONLON: Of course.

BY MR. CONLON:

Q Now, insofar as that is concerned, you made mention in cross-examination by Mr. Snelbaker of the fact (86) that originally that the Dacostas and other names, as I understand it, had considered making Mr. White a director and having some sort of official function in the company. Did the financial position of the company have any bearing on their decision, do you know?

A Well, I can't speak, Mr. Conlon, as to what was in their mind at the time, that is the Dacostas.

The original agreement, as we had discussed it, as Mr. White and I and Mr. Binder had discussed that, it is an extensive agreement. Mr. White was retained as director. He was selling his stock and he would remain as president and chief executive officer.

As I understand it, when Mr. White executed that contract, those provisions were there. I received a call, as I say, 10:30, 11

o'clock the following day and Mr. Binder informed me that the Dacostas had changed their thinking there.

They felt if they were going to have this entity in the United States, with the losses that were being incurred, that they wanted new management in charge of it. And he asked me at that point if I would serve in that capacity. And I said only on an interim basis I would. Because I had been advising him regarding the losses prior to that time.

MR. CONLON: I see.

(87) Your Honor, I have no other questions in re-examination. Does your Honor have any questions? Thank you, sir.

MR. SNELBAKER: I have one question, if I may.

FURTHER EXAMINATION

BY MR. SNELBAKER:

Q Have you turned the company around now?

A The company is doing better, Mr. Snelbaker.

MR. SNELBAKER: Thank you.

MR. CONLON: Let him finish the answer.

THE WITNESS: I would like to finish that.

THE COURT: Go ahead.

MR. SNELBAKER: Go ahead. We are waiting.

THE WITNESS: The industry is not in the best of times. Mr. White's former company is not perhaps any worse than some other companies, but at this point in time, improvements have been made, yes.

MR. SNELBAKER: That is all I have.

MR. CONLON: Thank you, Mr. Jones.

Your Honor, SPA at the end of the name of the corporation is the same as Inc. in the United States. It means Spezeta Aazione. It is Italian. I thought that might assist your Honor.

THE COURT: Now, Mr. Conlon, there is a (88) request of the plaintiff for quite a number of documents.

MR. CONLON: Your Honor, I see that.

THE COURT: And when can the plaintiff expect to receive those things?

MR. CONLON: Well, your Honor, can I consult on that and let you have a realistic date? I don't want to mislead anybody, but I would say, on my feet, maybe seven to fourteen they can have those documents.

THE COURT: Well, with whom do you want to consult, sir?

MR. CONLON: Seven to fourteen. Mr. Jones. Because he had the last conversation with Mr. Binder. And I would say maybe if I could contact Mr. Binder, but I think it would be safe to say seven to fourteen.

THE COURT: Well, do you want to call Binder right now? I will take a recess for that purpose.

MR. CONLON: Your Honor, yes, if it helps your Honor.

THE COURT: All right.

MR. CONLON: Does your Honor want to in recess consider the matters of law that you mentioned earlier on that you would consider?

THE COURT: Well, I have been considering those in the meantime, and I still continue to do that. (89) But I will give you a recess to call Mr. Binder right now, because to get this off the mark, obviously the documents are needed, and I want to have an outside date on this.

MR. CONLON: Your Honor has not been referred to the law. How can your Honor consider the law if I haven't referred it to you?

THE COURT: I am always considering the law, Mr. Conlon. Now, we will be in recess.

MR. CONLON: Oh, I see. I am obliged.

(Whereupon, a recess was taken.)

THE COURT: Have you had an opportunity to make your call to Mr. Binder?

MR. CONLON: Yes. I am just reading through this. There is a problem that some of these might well be still in Portugal. Financial statements he wants—

THE COURT: Sir, have you had a chance to call Attorney Binder?

MR. CONLON: Your Honor, there is a recording machine on.

THE COURT: What does it say?

MR. CONLON: That he is not there, would you leave a message?

THE COURT: What telephone number did you call, sir?

(90) MR. JONES: 305-374-2212.

MR. CONLON: Shall we recess so your Honor may –

THE COURT: That was Mr. Jones speaking. Is that the number you called, sir?

MR. CONLON: I understand that is the number he called, yes. Do you wont me to call?

THE COURT: Oh, you didn't call yourself?

MR. CONLON: No, I didn't. You didn't ask me to.

THE COURT: I assumed—I talk to you only in this case.

MR. CONLON: I directed Mr. Jones to do it for me. If you want me to—

THE COURT: No, sir, I take your word for it.

MR. CONLON: Thank you.

THE COURT: Mr. Jones, you made this call, did you?

MR. JONES: Yes, sir.

THE COURT: And you called the number you just mentioned?

MR. JONES: Yes.

THE COURT: What was the message you received?

(91) MR. JONES: A female voice—a female voice answered saying that there was no one there to receive a call, and that you could leave a message and they would return a call.

THE COURT: Did you leave a message?

MR. JONES: I left a message for him to call, yes, or I will get back to him later.

THE COURT: Now, Mr. Conlon, can you make a representation to me about when plaintiff can expect to receive the documents?

MR. CONLON: Your Honor, fifteen days. But there are one or two matters on here—I have asked Mr. Snelbaker if he could

perhaps give us a time copy of this. But if this is all we are going to get, this is all we are going to get.

But there is one or two things on here, financial statements of the Euro-Ceramics Corporation to the first of January, 1989. Your Honor, on what basis does he want that? And they are probably in Portuguese. I don't understand why—

THE COURT: Well, get it in Portuguese if you can. I don't worry about what language it is in.

MR. CONLON: Very well, your Honor, we will assist him as best we possibly can on this.

THE COURT: Pardon me?

(92) MR. CONLON: We will assist him as best we possibly can. If there are things we can't obtain, we will come back to the court and indicate to the court we can't obtain them.

As far as I see, all the relevant matters that he has asked for to date, he can have in fifteen days.

THE COURT: Now, is this—is there any question about what this list contains?

MR. CONLON: Your Honor, all the returns and financial statements of J. Nevin White Lumber Company continuing from those—continuing is it—continuing in this case through the date—I don't know—employment agreement with Euro-Ceramics, non-compete agreement with Euro-Ceramics.

It would be much better if he had a copy typed up. Financial statements of Euro-Ceramics.

THE COURT: All right. We are going to take a recess and we will type a copy of it.

MR. CONLON: Thank you very much.

THE COURT: All right. We are now in recess. Marie, can you type a copy of this?

(Whereupon, a recess was taken.)

THE COURT: Court is in session.

(93) MR. CONLON: Your Honor, I am grateful—

THE COURT: Now, Mr. Conlon, do you have a copy of these requests for documents?

MR. CONLON: Thank you, yes. Your Honor, if you look at number one and number three, number four, these are new matters. And the ones we have already discussed, about fifteen days. I would undertake to do that.

The problem now is this, is that it seems to me that insofar as number four is concerned, this is a matter of Euro-Ceramica, and they would have to be contacted. And I am looking at a realistic time schedule about the second week in March.

Your Honor, it would be absurd of me to say less than that because I don't know how long it is going to take for them to get it over here. Of course, since they are outside the jurisdiction they could object.

THE COURT: All right. I am referring to that page and the numbers. Now, represent what you believe that you can have for me or for the court and the Plaintiff in fifteen days, which numbers?

MR. CONLON: Two and three and five. Now, in respect of one, you will recall, all tax returns and financial statements of J. Nevin White Lumber Company, Inc, there has been an extension on that and they could be (94) prepared only subsequent to the receipt of the purchase agreement. In effect, once the purchase agreement has been received, the accountant will then prepare one. If you follow me. He needs that in order to prepare one, which is the tax returns.

THE COURT: I believe last year's tax return is around somewhere, isn't it?

MR. CONLON: Well, your Honor, the last year's tax returns, there has been an extension on them and that would incorporate—

THE COURT: You mean the tax return for 1988 has not yet been filed? Is that what you are saying?

MR. CONLON: Yes, that has been filed.

THE COURT: All right.

MR. CONLON: Yes.

THE COURT: Now, that is available, isn't it?

MR. CONLON: I think it is, yes. I understand that the other proceedings, these were made available to the other side, but if they want them again—

THE COURT: I am just trying to determine what you can get.

MR. CONLON: Fine. Perhaps the '89 will be more helpful because it is '89 he seems to be interested (95) in.

(95) THE COURT: Oh, I am sure it will, sir. And the question is what do you have on that at this point?

MR. CONLON: Well, what we have on that at this particular point is that we are awaiting that purchase agreement to incorporate that—

THE COURT: Has a request for an extension been made yet?

MR. CONLON: Yes.

THE COURT: All right, Well, furnish that part of it.

MR. CONLON: I don't think there is any difficulty on that, is it? Yes, I suppose if that is the case. But Mr. Snelbaker wants a complete record, as I understand it, and as much information as possible.

I don't want to have to come back to this court and say to your Honor, look, I have tried my best, but I still haven't got it. And I did say on the 9th that I was going to have difficulties with this. I am trying to be as open as I possibly can be, your Honor.

MR. SNELBAKER: Then provide us with what is available, that is all we can ask.

MR. CONLON: I am not saying I am not going to provide it. I am determining—his Honor is wanting (96) assistance as to what length of time he should allow, as I understand it.

MR. SNELBAKER: The tax returns, financial statements are in existence. They are someplace, and I would assume Mr. Clark has them readily available at Mifflintown. So they should be within a week.

The stuff that is coming from Florida, you say you are going to have that by the end of this coming week. That is what Mr. Jones told us.

MR. CONLON: Well, I said yes, but, see, the thing is, if you want the full tax returns, the accountant is going to have to work

on the full tax returns in the context of the purchase agreement. It is obvious—

THE COURT: All right.

MR. SNELBAKER: The extension would have run out by this time, because it would have been until the 15th of February, the fiscal year ending of May 31st. So I am sure that they would have had this material all together and—

THE COURT: All right. I am trying to, of course, give you what you want, which you say is fifteen days to supply what is available right now. Some things from overseas may take a little longer, and I understand that.

(97) Are you saying you can get what is in existence within fifteen days?

MR. CONLON: Yes, your Honor, that must be correct, yes.

THE COURT: Now—

MR. CONLON: There is a point number four, and can I mention that now? That is, of course, Euro-Ceramica being a Portuguese company, if they choose not to supply that information, very little can force them because it is outside your jurisdiction.

THE COURT: Just come in with your documentation about what the problem is on that, sir, and we will deal with that as it comes up.

MR. CONLON: Of course.

THE COURT: Now, I don't suppose that it would be beneficial to hear anything on Monday, am I correct on that or not correct, Mr. Snelbaker?

MR. SNELBAKER: You are indeed correct, your Honor.

THE COURT: So we will not be having any hearing on Monday.

MR. SNELBAKER: I might add, your Honor, and I want this to be understood, in the production of all this material, that when we talked by phone to Mr. Jones on the 19th, I followed that up with the document which is (98) Plaintiff Exhibit 1 now in evidence, which went out the same date, and which has been available. And at that time, we were promised that we would have the documents from the sale by the end of the week of January 22nd.

Subsequent to that, I have gotten a message from Mr. Jones that they would get them promptly. Now, we have gone almost three more weeks and we still do not have those documents. I think they are stalling on that.

THE COURT: That is another matter I am going to lay to rest right now.

MR. CONLON: Can Mr. Jones give evidence on that, your Honor?

THE COURT: There is no nee to.

I think it was in late December, 1989, that Mr. Snelbaker came in to me requesting that this procedure be started to get the tax consequences of this sale. Is that correct, Mr. Snelbaker?

MR. SNELBAKER: Yes, your Honor, it is.

THE COURT: All right. Now, Mr. Snelbaker wants a record about—

MR. SNELBAKER: I am sorry, that was November 15th, your Honor.

THE COURT: All right. Mr. Snelbaker wants to make a record of certain delays in that time, and Mr. Conlon wants to offer reasons for any delays and argue (99) that he doesn't have enough time to go forward with the hearing right now.

I am going to short circuit both of those arguments, gentlemen, I don't want to hear any more arguments from either one of you regarding the delays that we have had up to this point.

I am going to wipe the slate clean, primarily on Mr. Conlon's behalf, and draw no inferences from these delays, however they have happened up until today's date. So that obviates any further argument from you, sir, that you don't have time to prepare this and that.

MR. CONLON: Your Honor, that is not the case

THE COURT: I am going to give you that time.

MR. CONLON: That has not been my case. My case has been the jurisdiction.

THE COURT: Now, I am going to cover the jurisdiction. So, please, I caution both counsel that I don't want to hear any procedural matters anymore up to today's date.

Now, Mr. Conlon, I have read what authorities you have furnished to me so far, and I determine that I do have jurisdiction, and I am going to (100) move ahead.

MR. CONLON: Your Honor, would you indicate which authorities—

THE COURT: I am not going to entertain anymore argument on that question, sir. You must understand me.

MR. CONLON: I do understand. But, your Honor, I am asking which authorities they are. I have only indicated one authority.

THE COURT: You have given me a case and several rules of law I have looked at.

MR. CONLON: But there are a whole host of authorities there.

THE COURT: Sir, do you understand I have made a ruling and I do have jurisdiction and I am moving ahead? And it is interlocutory and it is not appealable, and we are going to untie the knot here in some fashion or another. Now, you were going to supply this information, sir, within fifteen days and—

MR. CONLON: As much as available, your Honor, yes.

THE COURT: All right. And you are going to be in my office together with Mr. Snelbaker to explain what you don't have fifteen days from today's date, and I want to hear why you do not have it.

(101) MR. CONLON: That is the 24th?

THE COURT: Well, sir, that is a weekend, so that would be on the 26th.

MR. CONLON: The 26th, yes.

THE COURT: And—

MR. CONLON: Can I have it in the afternoon?

THE COURT: Pardon me?

MR. CONLON: Can I have it in the afternoon, please?

THE COURT: Indeed you can, sir. I expect to see both counsel in my office at 1 o'clock that afternoon, and you will get no further notice on that. That is February 26, 1990, at 1:00 p.m. in my office here at the courthouse. I expect to see both counsel in person.

In case it isn't clear, on jurisdiction, I do determine that I have jurisdiction. And I will entertain no further argument on that.

MR. CONLON: There are two matters I would like to address you on. First of all, could I ask if it would be possible—I understand it has to be through you—that I have a transcript of these proceedings?

THE COURT: You work it out with the stenographer, and provided that you pay her, I am sure she (102) will be glad to type anything. I have no objections to any transcripts.

MR. CONLON: The other matter is I have a subpoena for your Honor to appear in the County of Dauphin, Superior Court, in the other matter.

THE COURT: You have a subpoena for me, sir?

MR. CONLON: Your Honor, yes, there it is.

THE COURT: For what purpose?

MR. CONLON: Well, for the purposes of giving evidence on behalf of Mr. White with regard the decree of divorce.

THE COURT: Sir, any evidence that I have on that is already in the record and can be referred to the record and does not require my testimony.

MR. CONLON: Well, your Honor, I have served a subpoena—

THE COURT: I will not be appearing, I tell you that right now.

MR. CONLON: The subpoena is served upon you. And, in the circumstances, as you have been asked to be a witness by subpoena in that matter, can I ask you to disqualify yourself from any other matters arising out of this case?

THE COURT: Now you are really stretching (103) the limits of my patience, Mr. Conlon.

MR. CONLON: Your Honor, I am applying the law.

THE COURT: Mr. Conlon, I suggest that you are really testing the limits of this humble, little Common Pleas Court. I will not be there, and you make what record of it you will about it, sir.

MR. CONLON: Is your Honor saying you will not disqualify yourself from this matter?

THE COURT: I am saying exactly that, sir. Someone has to decide this case.

MR. CONLON: I agree.

THE COURT: I realize you would like to make a record and—

MR. CONLON: Your Honor, I have a record.

THE COURT: And you are welcome to make it.

MR. CONLON: The subpoena is on there. Thank you.

THE COURT: And while we are about that, Mr. Conlon, do you also practice criminal law, sir?

MR. CONLON: Your Honor, yes.

THE COURT: Are you familiar with the Federal RICO statutes?

MR. CONLON: Your Honor, I am indeed. In fact, I have a couple of matters pending on the RICO (104) statute, the civil and criminal. Is there any particular part?

THE COURT: Are you familiar with the RICO statute in Pennsylvania?

MR. CONLON: I would have to look at it again.

THE COURT: May I suggest you brush up on those, sir? Because—

MR. CONLON: Is there a particular section?

THE COURT: —I do not know where this case will go in the future, but it may end up on the desk of the United States Attorney or the Attorney General of Pennsylvania.

MR. CONLON: Is there a particular section you refer me to? That would save a lot of time.

THE COURT: Sir, I just refer you to the statute.

MR. CONLON: Thank you. I am grateful to your Honor.

(Whereupon, the following Order was entered.)

AND NOW, February 9, 1990, 4:45 p.m., J. Nevin White, having appeared in court together with personal counsel, Benjamin V. R. Conlon, Esquire, and together with Mr. White's personal adviser, Roland S. (105) Jones, and Richard C. Snelbaker, Esquire, having appeared on behalf of the plaintiff, and these people having appeared in response to our order of January 4, 1990, we note that certain testimony has been taken in a broad attempt to answer the questions raised in that order. We note that Mr. White has denied having personal possession of

various of the documents requested and that his attorney, Mr. Conlon, has requested fifteen days to obtain various of these documents. We give the defendant and his attorney fifteen days to obtain receipt of the requested documents as outlined on the separate sheet attached hereto (and we note that Mr. Conlon has this moment received this request for documents), and we direct Mr. Conlon and Mr. Snelbaker to appear in our office on Monday, February 26, 1990, at 1:00 p.m. to explain why any of the requested documents have not been furnished to that date.

We have considered an argument made on behalf of the defendant that we do not have jurisdiction to continue further in this case, and we do determine that we do have jurisdiction to continue hearing matters as directed to us by the Supreme Court.

MR. SNELBAKER: Superior Court.

MR. CONLON: Supreme Court.

THE COURT: By the Superior Court of (106) Pennsylvania in their order of February 24, 1989.

By the Court,

/s/ George E. Hoffer
GEORGE E. HOFFER, J.

THE COURT: Is there anything else I haven't covered here, Mr. Snelbaker?

MR. SNELBAKER: Yes, your Honor. I think it might be appropriate to have the documents which are to be produced delivered at the meeting on the 24th of February or 26th, whatever it was.

THE COURT: Well, I thought Mr. Conlon might be able to mail you anything he had before that time.

MR. CONLON: Well, that is what I thought.

THE COURT: All right.

MR. SNELBAKER: If you will direct that.

THE COURT: No, I am not going to—

MR. SNELBAKER: Okay.

THE COURT: —direct that. If it hasn't been given by that time, I expect it to be given that day or a very cogent reason presented why it is not available.

Anything else?

MR. SNELBAKER: No, your Honor. The only thing I would ask I guess is that the hearing for (107) tomorrow—for Monday be continued and I—while I would like to have a hearing, and I want to have a hearing as quickly as possible, I am placed at a disadvantage at this point by not having the material.

THE COURT: I understand. The hearing scheduled for Monday, February 12, 1990, is now continued generally because not enough information is available to adequately resolve the valuation issue. The court will entertain a request to reschedule the hearing at an appropriate time in the future.

Anything else?

MR. SNELBAKER: No, your Honor.

THE COURT: Mr. Conlon, is there anything else?

MR. CONLON: No, your Honor. Thank you.

THE COURT: Now, I have told you I am not considering any argument on plaintiff's behalf that there has been stonewalling up to this point.

MR. CONLON: What do you mean by stonewalling?

THE COURT: I want to start it clean. That there has been a conscious and willful delay on the part of Mr. White. I want to start fresh on that point from today.

But I caution all who are in court and can hear me that I will not entertain any further delay in this case and it is going to move ahead.

Court's in recess.

MR. CONLON: That applies to Mr. Snelbaker as well as, of course, doesn't it?

THE COURT: Court's in recess.

(Whereupon, the proceeding was concluded at 5:00 P.M.)

CERTIFICATION

I hereby certify that the proceedings are contained fully and accurately in the notes taken by me on the above cause and, that this is a correct transcript of same.

MARIE T. FARLEY
Official Court Reporter

The foregoing record of the proceedings on the hearing of the within matter is hereby approved and directed to be filed.

GEORGE E. HOFFER, J.

Appendix E—Order of Judge Hoffer—In Re: Equitable Distribution (Tax Consequences) Dated August 24, 1990

IN THE

COURT OF COMMON PLEAS OF CUMBELAND COUNTY, PENNSYLVANIA

WILLA E. WHITE,

Plaintiff

V.

J. NEVIN WHITE,

Defendant

CIVIL ACTION—LAW
4730 CIVIL 1981

IN RE: EQUITABLE DISTRIBUTION (Tax Consequences)

ORDER OF COURT

AND NOW, August 24, 1990, at 12:10 p.m., the plaintiff having completed her testimony, and the defendant having rested his case without the presentation of any testimony, we do consider the record to be closed as far as any presentation of testi-

mony on the tax consequences of this equitable distribution. We direct that counsel for each party shall present to the court a proposed Order of Court covering all aspects of this case to be considered on remand, and we direct that this proposed order shall be given to the court in chambers by Friday, September 7, 1990. We offer the opportunity to either counsel to furnish supporting memoranda along with the proposed order.

I direct that Mr. White post a cash bond in this case of $50,000.00, and that this be done no later than September 7, 1990.

By the Court,
GEORGE E. HOFFER, J.

RICHARD C. SNELBAKER, ESQUIRE
For the Plaintiff

BENJAMIN CONLON, ESQUIRE
For the Defendant

Appendix F—Petition For Special Relief Dated August 30, 1990

IN THE

COURT OF COMMON PLEAS OF CUMBERLAND COUNTY, PENNSYLVANIA

WILLA E. WHITE,

Plaintiff

vs.

J. NEVIN WHITE,

Defendant

NO. 4730 CIVIL 1981
CIVIL ACTION—LAW IN DIVORCE

PETITION FOR SPECIAL RELIEF

TO THE HONORABLE, THE JUDGES OF SAID COURT:

AND NOW comes WILLA E. WHITE, the Plaintiff in the above captioned matter, by her Attorneys SNELBAKER & ELICKER, P.C., and respectfully represents as follows:

1. That by Order dated April 6, 1988, Honorable George E. Hoffer made an award of marital property in the above matter,

which Order was appealed by the Defendant to the Pennsylvania Superior Court which resulted in the remand of the case to this Court for consideration of various issues.

2. That subsequent to said Order of April 6, 1988, but prior to the hearing on remand, Defendant unilaterally, without permission of this Court and without consent of the Plaintiff, converted and dissipated marital assets as follows:

A. He allegedly sold all of his capital stock in J. Nevin White Lumber Company, Inc., for only $1,300,000, on or about October 27, 1989, with no cash on account, in installments over 10 years, with no payments to be due until April 27, 1990 (6 months after date of agreement).

B. He has failed to collect or enforce collection of the amounts now due in the transaction recited in Subparagraph A now totalling not less than $158,333.40, being composed of principal payments of $50,000 (5 monthly installments of $10,000) and interest of $108,333.40 (10% of $1,300,000 from October 27, 1989, to August 27, 1990).

C. He allegedly sold his individually owned real estate in Centre County, Pennsylvania, on November 16, 1989, for $257,000, without receiving any cash on account, but deferred over a period of 20 years.

D. He sold the timber from the Centre County real estate to his wholly owned corporation, J. Nevin White Lumber Co., Inc., by written agreement dated July 1, 1989, for $139 per 1,000 board feet, without receiving any cash on account at any time and without recording an account payable by the corporation to him.

E. He allegedly sold his individually owned real estate in Juniata County, Pennsylvania, on November 16, 1989, for

$63,300, without receiving any cash on account, but deferred over a period of 20 years.

F. He sold the timber from the Juniata County real estate to his wholly owned corporation, J. Nevin White Lumber Co., Inc., allegedly on an oral contract for $150 per 1,000 board feet, without receiving any cash on account at any time and without recording an account payable by the corporation to him.

G. He has failed to collect or enforce collection of the accounts payable recited in sub-paragraphs D and F above.

3. That the capital stock and real estate identified in Paragraph 2, Subparagraphs A, C and E, together with the timber then in place on said real estate, were to become the security for the payment of the cash award to Plaintiff under the Order of April 6, 1988, by pledge of 50% of the stock and by first mortgage lien on both tracts of the real estate.

4. That said capital stock and real estate constitute the principal part of the marital estate, having an aggregate value of $3,489,500 as established by said Order of April 6, 1988.

5. That on or about January 18, 1989, Defendants' representatives, namely, Roland S. Jones and Benjamin Conlon, acting on behalf of Defendant, in the course of offering to settle the present action, threatened Plaintiff's counsel that if the proposal then presented was not accepted within seven (7) days, Defendant would seek protection of federal bankruptcy laws to avoid the effect of the Order of April 8, 1988, which was then on appeal and undivided.

6. That in light of the threat in Paragraph 5 above Plaintiff believes that Defendant may be moving toward a similar avoidance by his actions in dissipating the marital assets as recited

above, at least to the extent of preventing the imposition of tangible security to secure this Court's future award.

7. That the sale of the capital stock mentioned in paragraph 2A above was allegedly to Euro-Ceramica, S.A., a Portuguese organization, presumably a corporation, and to Hermenegildo Correia Da Costa, presumably an individual, and Hernani Andre Bile Da Costa, presumably an individual, all apparently residing in the nation of Portugal.

8. That the sale of the real estate mentioned in paragraphs 2C and 2E above was allegedly to Credit-Line Financial, a Delaware corporation, of Salisbury, MD, but with a mailing address of P. O. Box 284, Mifflintown, PA 17059; said entity obviously being under the control of Roland S. Jones.

9. That in hearings held by this Court in this action on February 9, 1990, August 22, 1990, and on August 24, 1990, Defendant testified that he knew virtually nothing about the sales of capital stock and real estate mentioned above, but was following the directions of Roland S. Jones, being the same person mentioned in Paragraph 5 above.

10. That in the hearing held on August 22, 1990, Defendant testified falsely on the following matters:

> A. That he knew little about the purchaser of the Centre and Juniata County real estate (when in fact he made and received documents more fully recited in paragraph 11 below which clearly indicate that the purported purchaser was Credit-Line Financial Corp., a Delaware corporation, whose principal place of business is Salisbury, MD (the same city as the business address of Roland S. Jones and of Benjamin Conlon) and which maintains a Pennsylvania presence by having a post office address at P. O. Box 284, Mifflintown, PA 17059, which entity

appears to be controlled by Roland S. Jones as president and one Shari L. Jones as secretary);

B. That the name of the purchaser-mortgagor of the real estate was "First Federal Corporation of Delaware,"or some similar name (when in fact the name was/ is Credit-Line Financial Corp., mentioned above);

C. That the sale price of the Juniata County real estate was $60,000 (when in fact it is recorded at $63,300);

D. That the sale price of the Centre County real estate was $300,000 (when in fact it is recorded at $257,000);

E. That he received purchase money mortgages from the purchaser of $60,000 and $300,000 (when in fact they are recorded at $63,300 and $257,000);

F. That the terms of said mortgages were 10 years in duration (when in fact said recorded mortgages show the terms of both to be 20 years in duration);

G. That the terms of sale of the Centre County timber to J. Nevin White Lumber Company, Inc., was oral in form and for a price of $150 per 1,000 board feet (when in fact a recorded agreement dated July 1, 1989, made in Salisbury, MD, documents the sale of said timber at a price of only $139 per 1,000 board feet, with certain reductions (to $125 per 1,000 board feet) and other alternative terms in the event the purchaser is "restrained" from harvesting the timber, with payment deferred over 12 years with annual payments due on December 31 of each year); and

H. That he feigned continued ownership of the above recited mortgages (when in fact he assigned both on

February 27, 1990, to Bathurst Investment, S.A., said latter name having no further identification as to nature or place of origin, other than an apparent address in Mifflentown, PA, in care of "R.S. Jones Co., Inc.", P. O. Box 284, Mifflintown, PA 17059).

11. That as a result of the foregoing testimony and further because Defendant and his representatives made vague, evasive, and suspected bad faith responses to Plaintiff's counsel's questions for information concerning the alleged purchaser of the real estate, Plaintiff caused a search to be made of the public records of Juniata and Centre Counties and found the following (certified copies of which are available):

A. JUNIATA COUNTY

Deed:

Date: November 16, 1989

Grantor: John N. White, of 2311 N. Front St., Harrisburg, PA

Grantee: Credit-Line Financial Corp., a Delaware corporation with its principal place of business in Salisbury, Maryland

Consideration: $63,300

Subject Matter: 211 acres, more or less, timberland Lack Township, Juniata County, PA

Acknowledgment: 11/16/89, Juniata County, PA

Certificate of Residence of Grantee: P.O. Box 284, Mifflintown, PA 17059, signed by: Roland S. Jones

Recorded: November 16, 1989. Deed Book 146, Page 597 *et seq.*

Mortgage:

Date: November 16, 1989

Mortgagor: Credit-Line Financial Corp., a Delaware corporation, with principal place of business is Salisbury, MD

Mortgagee: John N. White, 2311 N. Front St., Harrisburg, PA

Principal Amount: $63,300

Rate of Interest: 9% per annum

Term: 20 years

Payment terms: 20 annual principal payments of $3,165 each due May 15, with first payment due May 15, 1991. Interest payable at principal payment times.

Secured property: 211 acres, more or less, timberland, Lack Township, Juniata County, PA

Signature of Mortgagor: Corporate form by Roland S. Jones as president; Shari L. Jones, secretary

Acknowledgment: 11/16/89, Wicomico, Maryland, Roland S. Jones, as president

Certificate of Address of Mortgagee: signed by Roland S. Jones, showing 2311 N. Front St., Harrisburg, PA 17110

Instruction to Recorder of Deeds: "Return to P.O. Box 284, Mifflintown, PA 17059"

Recorded: November 16, 1989, Mortgage Book 89, Page 512, *et seq.*

Assignment of Mortgage:

Date: February 27, 1990

Assignor: John N. White

Assignee: Bathurst Investment, S.A. (no address given)

Consideration: "$10.00 and other valuable considerations"

Subject Matter: the Mortgage described above

Acknowledgment: 2/27/90, Dauphin County, Pennsylvania

Instruction to Recorder of Deeds: "Return to. . . Name: R.S. Jones Co., Inc.[;] Address: P.O. Box 284, Mifflintown, PA 17059."

Recorded: March 14, 1990, Miscellaneous Record Book 65, Page 346, *et seq.*

B. CENTRE COUNTY

Deed:

Date: November 16, 1989

Grantor: J. Nevin White, of 2311 N. Front St., Harrisburg, PA

Grantee: Credit-Line Financial Corp., a Delaware corporation with its principal place of business in Salisbury, Maryland

Consideration: $257,000

Subject Matter: 1,100 acres, more or less, timberland Walker and Gregg Townships, Centre County, PA

Acknowledgment: 11/16/89, Juniata County, PA

Certificate of Residence of Grantee: P.O. Box 284, Mifflintown, PA 17059, signed by: Roland S. Jones

Recorded: December 4, 1989, Record Book 508, Page 946 *et seq.*

Mortgage:

Date: November 16, 1989

Mortgagor: Credit-Line Financial Corp., a Delaware corporation, with principal place of business is Salisbury, MD

Mortgagee: J. Nevin White, 2311 N. Front St., Harrisburg, PA

Principal Amount: $257,000

Rate of Interest: 9% per annum

Term: 20 years

Payment terms: 20 annual principal payments of $12,850 each due May 15, with first payment due May 15, 1991. Interest payable at principal payment times.

Secured property: 1,100 acres, more or less, timberland, Walker and Gregg Townships, Centre County, PA

Signature of Mortgagor: Corporate form by Roland S. Jones as president; Shari L. Jones, secretary

Acknowledgment: 11/16/89, Wicomico, Maryland, Roland S. Jones, as president

Certificate of Address of Mortgagee: signed by Roland S. Jones, showing 2311 N. Front St., Harrisburg, PA 17110

Instruction to Recorder of Deeds: "Return to Roland S. Jones, P.O. Box 284, Mifflintown, PA 17059"

Recorded: December 4, 1989, Record Book 508, Page 952, *et seq.*

Assignment of Mortgage:

Date: February 27, 1990

Assignor: John N. White

Assignee: Bathurst Investment, S.A. (no address given)

Consideration: "$10.00 and other valuable considerations"

Subject Matter: the Mortgage described above

Acknowledgment: 2/27/90, Dauphin County, Pennsylvania

Instruction to Recorder of Deeds: "Return to . . . Name: R.S. Jones Co., Inc.[;] Address: P.O. Box 284, Mifflintown, PA 17059."

Recorded: March 9, 1990, Record Book 518, Page 457 *et seq.*

12. That the same Roland S. Jones purporting to be acting on behalf of the alleged new management of the J. Nevin White Lumber Co., Inc., on January 11, 1990, discharged the corporation's independent accountant of many years, to wit: Thomas G. Clark, CPA, of Mifflintown, PA, and removed the corporate books and records from the accountant, presumably to the office of Mr. Jones in Salisbury, MD, thereby impeding any access to the corporate records by traditional production process of this Court.

13. That Mr. Jones' actions recited in Paragraph 12 above came subsequent to the issuance of notice by Judge George E. Hoffer dated November 15, 1989, that a pre-hearing conference of counsel would be held on the remanded issues on December 14, 1989, with a formal hearing to be held on February 12, 1990. It is noted that no one appeared at the conference of December 14, 1989, on behalf of Defendant. On December 14, 1989, Judge Hoffer scheduled a further conference for February 9, 1990, and directed Defendant to furnish certain specific information to Plaintiff by January 2, 1990. When Defendant failed to comply with the direction of December 14, 1990, Judge Hoffer, acting on Plaintiff's Motion for Enforcement of Prior Order issued a further Order on January 4, 1990, issuing a rule to show cause why certain information should not be provided, returnable on January 19, 1990. A certified copy of said order was served by certified mail, return receipt requested, upon Defendant's counsel, Benjamin Conlon, at the address of Roland Jones on January 8, 1990,—just 3 days prior to the latter's removal of the corporate records from CPA Clark.

14. That throughout these proceedings Roland Jones has purported to act for Defendant and Defendant's counsel in providing correspondence and court filings, including (a) the submission to this Court of his (Jones') affidavit dated January 10, 1990, purporting to answer for Defendant on the orders of December 14, 1989 and January 4, 1990, mentioned above, in disavowing

knowledge of corporate business when Defendant available to respond on his own behalf, (b) by participating by telephone in a prehearing conference on January 4, 1990, with Judge Hoffer and Plaintiff's counsel, (c) in signing correspondence purportedly originating from Defendant's counsel, and (d) certifying to Defendant's address as mortgagee on the mortgages recited in paragraph 11 above.

15. That Roland Jones has attempted to interfere with the parties' joint securities by contacting issuing corporations in order to direct dividends to Defendant.

16. That in the most recent hearing(s) held August 22 and 24, 1990, Defendant repeatedly pleaded ignorance to questions dealing with personal as distinguished from corporate facts, frequently deferring to Roland Jones.

17. That in each session of the hearings held before Judge Hoffer Roland Jones has sat at counsel table with Defendant and Defendant's counsel appearing to participate actively in the presentation of Defendant's case and providing records and information.

18. That Plaintiff believes that Defendant has delegated his discretion to Roland Jones and that Roland Jones is the alter ego of Defendant in these proceedings.

19. That Plaintiff believes and, therefore, avers the sale of corporate stock was a sham and concocted in bad faith to prevent her from securing future payment of any cash award on said stock and in order to prevent Defendant from having the cash to pay an award and to relegate all cash to a source beyond the apparent jurisdiction of this Court.

20. That said alleged sale of corporate stock was in fraud of Plaintiff, having been sold for a consideration less than its fair

value and on terms inconsistent with a good-faith arm's length transaction and fair dealing.

21. That the sales of the real estate were in fraud of Plaintiff, having been sold for a consideration less than its fair value and on terms inconsistent with good-faith arm's length transaction and fair dealing, said sales being to a corporation apparently controlled by the said Roland S. Jones.

22. That the disposition of the timber from the above mentioned real estate was in fraud of Plaintiff, having been sold in a transaction other than at arm's length and on terms inconsistent with reasonable business practice and fair dealing; and that in the document memorializing the sale of the Centre County timber, the parties provide for certain alternative terms in the event the harvest of timber is restrained, thus indicating their conscious actions to defraud Plaintiff by making alternative terms if caught.

23. That Defendant has failed to obey and pay a support order entered in Dauphin County, Pennsylvania, for spousal support of Plaintiff, since November 1, 1989, at the rate of $484.64 per week, thereby leaving Plaintiff destitute in her personal maintenance and participation in this litigation.

24. That Plaintiff believes Defendant will further dissipate the marital estate.

WHEREFORE, Plaintiff prays your Honorable Court pursuant to the legal and equitable powers vested in it by the Divorce Code to:

A. Order and direct Defendant to pay to Plaintiff forthwith a sum of money not less than $50,000 for Plaintiff's counsel fees, accountant's fees, appraisal and witness fees, as presently owing ($41,430.30) and to be incurred;

B. Order and direct Defendant to pay to Plaintiff forthwith a sum of money not less than $30,000 and the sum of $500 per week from September 1, 1990 as alimony *pendente lite;*

C. Enjoin Defendant from disposing of any marital assets or the product or replacement of converted marital assets;

D. Enjoin Roland Jones from dealing with any marital assets or the product or replacement of converted marital assets;

E. Enjoin Credit-Line Financial Corp. from disposing of any marital assets derived from Defendant or the product or replacement of converted marital assets;

F. Direct Defendant to restore his ownership of the capital stock of J. Nevin White Lumber Co., Inc. to its status as of April 8, 1988;

G. Set aside, rescind and cancel the sale of Defendant's capital stock of J. Nevin White Lumber Co., Inc.;

H. Impose a constructive trust on all of Defendant's assets;

I. Appoint a trustee or receiver at Defendant's cost and expense and direct the trustee or receiver to seize all of Defendant's assets with full power and authority to be substituted for Defendant;

J. Impose a constructive trust on all assets of J. Nevin White Lumber Company, Inc., and authorize the filing of appropriate public notice thereof as liens or *lis pendens* in

the Offices of the Prothonotaries and Recorders of Deeds in all jurisdictions where assets are known to exist;

K. Appoint a trustee or receiver at Defendant's cost and expense and direct the trustee or receiver to seize all of the assets of J. Nevin White Lumber Company, Inc.;

L. Direct Defendant to restore his ownership of the real estate in Centre and Juniata Counties, Pennsylvania to its status as of April 8, 1988;

M. Set aside, rescind and cancel the sales and conveyances of the Defendant's real estate in Centre and Juniata Counties, Pennsylvania;

N. Set aside, rescind and cancel the assignments of the mortgages from Defendant to Bathurst Investment, S.A. as related to the Juniata and Centre County real estate;

O. Order and direct Defendant to post good and adequate security in the form of cash or surety bond approved by the Court in the amount of $2,000,000 to assure performance of any final decree of distribution;

P. Attach Defendant's wages to secure payment of the sums due Plaintiff under any Order issued on this Petition if not paid forthwith; and

Q. Order such other and further relief as is necessary and just to protect Plaintiff's interest.

SNELBAKER & ELICKER, P.C.

By (Illegible)
Attorneys for Plaintiff
44 West Main Street
Mechanicsburg, PA 17055-0318
Telephone: (717) 697-8528

COMMONWEALTH OF PENNSYLVANIA)
: SS.
COUNTY OF CUMBERLAND)

WILLA E. WHITE being duly sworn according to law deposes and says: that she is the Plaintiff and Petitioner in the foregoing Petition and that the facts set forth therein are true and correct to the best of her knowledge, information and belief.

WILLA E. WHITE

Sworn to and subscribed before me
this 29th day of August, 1990
Patricia J. Thomson,
Notarial Seal
Patricia J. Thomson, Notary Public
Mechanicsburg Boro. Cumberland Co.
My Commission Expires Dec. 31, 1990

Appendix G—Order of Judge Hoffer—Dated August 30, 1990

IN THE

COURT OF COMMON PLEAS OF CUMBERLAND COUNTY, PENNSYLVANIA

WILLA E. WHITE,

Plaintiff

vs.

J. NEVIN WHITE,

Defendant

NO. 4730 CIVIL 1981
CIVIL ACTION—LAW IN DIVORCE

ORDER OF COURT

AND NOW, this 30th day of August, 1990, upon consideration of the within Petition for Special Relief and on motion of Snelbaker & Elicker, P.C., Attorneys for Plaintiff, a Rule is hereby issued on the following as Respondents

(a) J. Nevin White (Defendant)

(b) J. Nevin White Lumber Company, Inc.

(c) Roland S. Jones

(d) Credit-Line Financial Corp.

(e) Euro-Ceramica, S.A., Hermenegildo Correia Da Costa, and Hernani Andre Bile Da Costa

to show cause why the relief sought in the within Petition should not be granted, said Rule to returnable as to all Respondents listed above on the 31st day of October 1990, at 1:30 o'clock, P.M., in Court Room No. 3 of the Cumberland County Court House at Carlisle, Pennsylvania, at which date, time and place a hearing shall be held, and further said Rule to be returnable particularly with regard to Respondents listed in (a), (b) and (c) above for the entry of temporary and preliminary relief on the 5th day of September, 1990, at 11:30 o'clock, A.M., E.D.S.T., in said Court Room No. 3.

Service of a certified copy of this Order and the within Petition shall be served as follows:

(1) By personal service on Respondent (a) above.

(2) By personal service on Respondent (b) above by handing to the person then in charge of the corporation's office at Duncannon, PA.

(3) By certified mail return receipt requested and by regular mail or by an established private express mail delivery service to Respondents (c), (d) and (e) above.

By the Court,
G. E. HOFFER, J.

TRUE COPY FROM RECORD

In Testimony whereof, I here unto set my hand and the seal of said Court at Carlisle, Pa. This 30 day of Aug., 1990.

JANE H. SPARLING
Dpty. Prothonotary

Appendix H—Order of Judge Hoffer—In Re: Petition For Special Relief Dated September 5, 1990

IN THE

COURT OF COMMON PLEAS OF CUMBERLAND COUNTY, PENNSYLVANIA

WILLA E. WHITE,

Plaintiff

V.

J. NEVIN WHITE,

Defendant

CIVIL ACTION—LAW
NO. 4730 CIVIL 1981

IN RE: PETITION FOR SPECIAL RELIEF

ORDER OF COURT

AND NOW, September 5, 1990, 12:30 p.m,, the plaintiff having appeared with her counsel, Richard C. Snelbaker, Esquire, and having caused testimony to be presented in support of the petition, together with supporting exhibits, and the defendant not having appeared, but the court being put on notice that the defendant and his corporation were put on notice of this hearing

by personal service made by Walter F. Junkins, Professional Investigation Services, on August 30, 1990, at 11:15 a.m., and counsel further reporting that Roland S. Jones was served by regular mail and certified mail, said mailings being made on August 30, 1990, and the court believing that Roland S. Jones has received notice of the hearing today by his personal appearance earlier in the Judge's chambers to deliver the defendant's answer to "Plaintiff's Petition for Special Relief" and also "Defendant's Brief", both of which are signed by Benjamin V. R. Conlon, we do find as a fact that the defendant, J. Nevin White, the J. Nevin White Lumber Company, Inc., and that Roland S. Jones, all have personal knowledge and service of the hearing date today.

After hearing and consideration of the testimony presented, we order and direct as follows:

1. We order and direct the defendant to pay to the plaintiff forthwith the amount of $41,430.00, on account of accrued counsel fees, accountant's fees and appraisal and witness fees;

2. We order and direct the defendant to pay to the plaintiff forthwith, on account of moneys due her for marital property, the sum of $30,000.00, and we further direct that the defendant pay to the plaintiff, from this date on, the sum of $500.00 per week as alimony *pendente lite;*

3. We enjoin the defendant from disposing of any marital assets, and from disposing of the product or replacement of any converted marital assets. This injunction shall remain in effect until further Order of Court;

4. We enjoin Roland S. Jones from dealing with any of the marital assets, or the product or replacement of converted marital assets;

5. We enjoin Credit Line Financial Corporation from disposing of any marital assets derived from the defendant, or the product or replacement of converted marital assets;

6. We direct that a constructive trust shall be immediately imposed on all of the defendant's assets;

7. We impose a constructive trust on all assets of the J. Nevin White Lumber Company, Inc, and we authorize the filing of appropriate public notice thereof as liens or *lis pendens* in the office of the Prothonotarys and Recorder of Deeds in all jurisdictions where assets are known to exist;

8. We direct that the sales and conveyances and assignments of mortgages of defendant's real estate in Centre County and Juniata County, Pennsylvania, as manifested in Plaintiff's Exhibits 15, 16, 17, 18, 19, 20, and 21, shall be set aside, rescinded, and canceled, as frauds upon the court.

9. We order and direct that the defendant shall post a bond, in the form of cash or security approved by the court, in the amount of $1,300,000, to assure performance of any final decree of distribution, and that the defendant shall post this bond within ten days of the service of this order upon him;

At the request of the plaintiff for more time to submit the suggested order of distribution, previously requested by this court by September 7, 1990, we do grant an extension of time to either party to file such order, and that shall be for a period of 30 days from September 7, 1990.

By the Court,

GEORGE E. HOFFER, J.

RICHARD C. SNELBAKER, ESQUIRE
For the Plaintiff

BENJAMIN V. R. CONLON, ESQUIRE
For the Defendant

:mtf

TRUE COPY FROM RECORD

In Testimony whereof, I here unto set my hand and the seal of said Court at Carlisle, Pa. This 11 day of Sept., 1990.

JANE H. SPARLING
Deputy Prothonotary

Appendix I—Order of Judge Hoffer Dated September 13, 1990

IN THE

COURT OF COMMON PLEAS OF CUMBERLAND COUNTY, PENNSYLVANIA

WILLA E. WHITE,

Plaintiff,

vs.

J. NEVIN WHITE,

Defendant.

CIVIL ACTION—LAW
NO. 4730 CIVIL 1981

ORDER OF COURT

AND NOW, this 13th day of September, 1990, upon consideration of the within Petition for Special Relief, the Sheriff of Cumberland County, Pennsylvania (and the Sheriff of any other County in this Commonwealth as deputized by the Sheriff of Cumberland County) shall attach the person of J. Nevin White, Defendant herein, and bring him before this Court on the 27th day of September, 1990, at 8:30 o'clock A. M., prevailing time, to Court Room No. 3 of the Cumberland County Court House at

Carlisle, Pennsylvania, at which time and place a hearing will be held to show cause why Defendant should not be held in contempt of this Court and appropriate sanctions imposed.

By the Court,
/s/ GEORGE E. HOFFER, J.

TRUE COPY FROM RECORD

In Testimony whereof, I here unto set my hand and the seal of said Court at Carlisle, Pa. This 13th day of Sept., 1990

JOYCE A. MILLER,
Deputy Prothonotary

Appendix J—Notice of Appeal of Judge Hoffer's Order of September 5, 1990 (Dated Sept. 24, 1990)

IN THE

COURT OF COMMON PLEAS OF CUMBERLAND COUNTY, PENNSYLVANIA

WILLA E. WHITE,

Plaintiff/Appellee

v.

J. NEVIN WHITE,

Defendant/Appellant

CIVIL ACTION—LAW
NO. 4730 CIVIL 1981

NOTICE OF APPEAL

Notice is hereby given that J. Nevin White, defendant above named, hereby appeals to the Superior Court of Pennsylvania from the Order of His Honor, Judge George E. Hoffer, Court of Common Pleas of Cumberland County, Pennsylvania dated 5th day of September, 1990 (In Re: Petition For Special Relief). This Order has been entered in the docket as evidenced by the attached copy of the docket entry.

Further take notice that the Defendant/Appellant appeals to the Superior Court of Pennsylvania and requests that aforementioned order of His Honor, Judge Hoffer, dated September 5, 1990 be stayed forthwith.

Respectfully submitted,

J. NEVIN WHITE
Defendant/Appellant
P.O. Box 2575
Salisbury, MD 21801
1-800-227-5018

Dated this 24 day of September, 1990

TRUE COPY FROM RECORD

In Testimony whereof, I here unto set my hand and the seal of said Court at Carlisle, Pa. This 24th day of Sept. 1990.

SHIRLEY A. PEIPER
Dpty. Prothonotary

IN THE

COURT OF COMMON PLEAS OF CUMBERLAND COUNTY, PENNSYLVANIA

WILLA E. WHITE,

Plaintiff/Appellee

v.

J. NEVIN WHITE,

Defendant/Appellant

CIVIL ACTION—LAW
NO. 4730 CIVIL 1981

ORDER FOR TRANSCRIPT

A Notice of Appeal having been filed in this matter, the official court reporter is hereby Ordered to produce, certify and file the transcript in this matter in conformity with Rule 1922 of the Pennsylvania Rule of Appellate Procedure. (Hearing of September 5, 1990)

J. NEVIN WHITE
Defendant/Appellant

CERTIFICATION OF SERVICE OF NOTICE OF APPEAL

Roland S. Jones, being duly sworn, says that he today deposited copies of the annexed Notice of Appeal and Order for Transcript in a United States Post Office in Carlisle, Pennsylvania, enclosed in envelopes, with first-class postage prepaid, duly addressed to the following, pursuant to PA. R.A.P. 121:

The Honorable George E. Hoffer
Cumberland County Courthouse
P.O. Box 189
Carlisle, PA 17013

Richard C. Snelbaker, Esq.
Snelbaker & Elicker
44 West Main Street
Mechanicsburg, PA 17055

Gary Hollinger, Court Administrator
Cumberland County Courthouse
P.O. Box 189
Carlisle, PA 17013

Marie Farley, Court Reporter
Cumberland County Courthouse
P.O. Box 189
Carlisle, PA 17013

ROLAND S. JONES

Dated this 24th day of September, 1990.

Sworn to and subscribed before
me this 24th day of September, 1990.
BARBARA J. BACH
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires August 7, 1994

SUITS, 1981

Case # -S 4730
Date of Entry: Dec. 24 1981 at 1:37 P.M.

Appearances:
Plaintiff: Willa E. White
Defendant: J. Nevin White
Entry by Complaint (x)
Action in Divorce (x)
Service by SHF: 1/5/92
Date of Return: 1/14/92

12/24/81. Notice of availability of counseling and affidavit, filed.

1/22/82. Defendant's Answer to Plaintiff's Complaint, filed.

EDGAR B. BAYLEY,
Atty. for Deft.

2/23/82. Petition & Court Order, filed.

AND NOW this 23rd day of February, 1982, upon motion of Edgar B. Bayley, Esquire, attorney for petitioner, a Rule is issued upon Willa E. White to show cause why:

The issue of the constitutionality of the Pennsylvania Divorce Code, as it relates to the property obtained by the litigants prior to its effective date, should not be determined preliminary to further proceedings in this case.

This Rule returnable 20 days after service. All proceedings are stayed pending resolution of this rule.

BY THE COURT: Dale F. Shughart, P.J.

And now, February 23, 1981. Rule issued in accordance to above Order of Court.

SHIRLEY A. PEIPER
Dpty. Prothy

2/26/82, Service accepted.

SNELBAKER, McCALEB & ELICKER
by: Marlin R. McCaleb

5/25/82 Motion to Strike Defendant's Petition & Discharge Rule & Order of Court, filed.

AND NOW, this 25th day of May, 1982, upon consideration of the within Motion it is ordered and directed:

1. That the proceedings on Defendant's Petition and the Rule to show Cause issued thereon on February 23, 1982, are stayed pending disposition of this Plaintiff's Motion; and

2. That the within Motion and this Order be filed of record; and

3. That the issues raised by the within Motion be set down for argument.

By the Court,
HAROLD E. SHEELY, J.

5/27/82, Praecipe for Listing case for argument, filed.

May 25, 1982, Order of court, filed.

AND NOW, this 25th day of May, 1982, upon consideration of the within Motion it is ordered and directed:

1. That the proceedings on Defendant's Petition and the Rule to Show Cause issued thereon on February 23, 1982, are stayed pending disposition of this Plaintiff's Motion; and

2. That the within Motion and this Order be filed of record; and

3. That the issues raised by the within Motion be set down for argument.

By the Court,
HAROLD E. SHEELY, J.

7/14/82, Order of Court, filed.

AND NOW, July 14, 1982, the rule issued on February 23, 1982, at the request of J. Nevin White is dismissed. The Supreme Court of Pennsylvania in *Bacchetta v. Bacchetta*, filed May 26, 1982, held that property acquired prior to the effective date of the new Divorce Code is marital property and that this does not constitute a denial of due process.

The case is therefore stricken from the Argument Court List set for July 21, 1982.

By the Court,
HAROLD E. SHEELY, J.

7-27-82, Interrogatories propounded by deft. to be answered by plaintiff, filed.

December 31, 1984, Motion for Appt. of Master, filed. Received on acct. retake of costs $750.

12-31-84, Interrogatories w/answer propounded by deft. to be answered by Plff., filed.

12-31-84, Plffs. Inventory & appraisement, filed.

12-31-84, Plffs. Income and expense statement, filed.

January 2, 1984—Charles A. Stone, Esq. appointed master.

3/6/85, Praecipe, filed.

Please withdraw the appearance of Arnold, Slike & Bayley as attys for the deft. J. Nevin White.

JOHN SLIKE,
Atty. for Deft.

3/6/85, Praecipe, filed.

Please enter our appearance as attys for the deft. J. Nevin White.

THOMAS CALDWELL, JR.
Atty for Deft.

4-19-85, Income statement of J. Nevin White, filed.

4-19-85, Inventory & appraisement of J. Nevin White, filed.

4-19-85, Objections of Deft. J. Nevin White to Plffs. Inventory and appraisement, filed.

8/26/85, Praecipe, filed.

Please enter the appearance of Arthur A. Kusic, Esq. as counsel to J. Nevin White, deft. in the above captioned action.

ARTHUR A. KUSIC, ESQ.
Atty for Plff.

8/26/85, Agreement for withdrawal of counsel, filed.

Sept. 3, 1985, Received on acct. of addt'l. costs. $1,000—Snelbaker.

Sept. 9, 1985, Received on acct. of addt'l. costs. $2,000—Snelbaker.

10/2/85, Order, filed.

AND NOW, this 2nd day of Oct. 1985 upon the petition of Charles H. Stone, Esq. the appointment of Charles H. Stone, Esq. as master is extended until Dec. 31, 1985.

By the court,
HAROLD E. SHEELY, PJ

Oct. 22, 1985, Rec'd on acc't of add'l costs. $1,000 (A. Kusie).

12/13/85, Order, filed.

AND NOW, this 12th day of Dec. 1985 upon the petition of Charles H. Stone, Esq. the appointment of Charles H. Stone, Esq. as master is extended until Mar. 30, 1986.

By the court,
HAROLD E. SHEELY, PJ

February 28, 1986, Petition for Payment of Master's Fees and Order, filed.

AND NOW, this 28th day of February, 1986, upon consideration of the within Petition of Charles H. Stone, Esquire, as Master, it is ordered as follows:

1. The Prothonotary is directed to pay Charles H. Stone, Esquire, the sum of $2,809.25, from the deposit in the Prothonotary's hands, on account of his Master's fees, and the balance of his current bill of $3,750.00 as soon as a sufficient additional deposit is made.

2. The parties are directed to contribute an additional $5,250.00, to the deposit held by the Prothonotary in such proportion as they may agree, and if they cannot agree, each party shall contribute one-half thereof;

3. Upon receipt of sufficient funds, the Prothonotary shall pay the balance of the Master's bill;

4. The further bills of the Master shall be paid by the Prothonotary out of the deposit to be received at the rate of $50.00 per hour.

5. All proceedings to stay meanwhile.

By the Court,
HAROLD E. SHEELY, J.

March 14, 1986, Order of Court, filed.

AND NOW, March 11, 1986, the order of February 28, 1986, is amended as follows:

The Prothonotary is permitted to deduct his fees of $67.50 before returning the sum to Mr. Stone.

By the Court,
HAROLD E. SHEELY, P.J.

Master (Charles H. Stone, Esq.) Ck. #1599 written 3/18/86 $2,741.75.

Prothonotary's Office (Poundage) Ck. #1600 written 3/18/86 $67.50.

April 10, 1986, Rec'd on acc't of add'l costs from Willa White. $2,625.00.

April 18, 1986, Rec'd on acc't of add'l costs from Deft's atty. Arthur Kusic, $2,000.00.

May 14, 1986, Rec'd on acc't of add'l costs from Deft's atty. Arthur Kusic, $625.00.

Oct. 6, 1986, Master's Report, filed.

Charles H. Stone, Esq. (Master) $3,358.25 Ck. #1712 written 10/17/86.

Geiger & Foria Reporting Service, Inc. $858.75 Ck. #1713 written 10/17/86.

Prothonotary's Office (Poundage) $52.50 Ck. #1714 written 10/17/86.

Treas. $10.00.

L.L. $.50.

Oct. 15, 1986, Plffs exceptions to masters report, filed.

Oct. 17, 1986, Exceptions to Masters report.

Oct. 17, 1986, Certificate of service, filed.

ARTHUR A. KUSIC, ESQ.
Atty. for Deft.

Dec. 3, 1986, Defendant's reply to plaintiffs answer to motion for continuance, filed. /and motion for continuance.

Dec. 4, 1986, Order, filed.

AND NOW, this 4th day of Dec. 1986 after consideration of the within motion, the motion is refused.

GEORGE E. HOFFER, J.

Dec. 4, 1986, Plaintiffs answer to defts motion for continuance, filed.

Apr. 6, 1988, Opinion and order of court, filed.

AND NOW, this 6th day of April, 1988, for the reasons appearing in this opinion and in the master's report, the following is ordered:

1. Upon presentation to the court of the appropriate decree in divorce to be entered pursuant to §201(d) of the divorce reform code of 1980, the court will sign same.

2. Equitable distribution is as follows:

2.a To Plaintiff: 1) The parties' jointly owned residence at 863 Hill top Rd., Lemoyne, Pa. with all furniture and fixtures situate therein; 2) The parties' jointly-owned securities, having a value of $25,761.16; 3) PLAINTIFF's individually-owned life insurance policies, with cash surrender value of $46,334.90; 4) The two jointly-owned lots in Florida, at Bethel Isle, worth $85,000; and at Veromer, worth $52,000; 5) Plaintiff's individually owned securities, having a value of $13,862.38; 6) A cash distributive award of $1,662,990.00, payable in equal quarterly installments over 10 years from the date of the divorce decree, with interest at a rate of seven percent per annum. As security for the obligation, the deft. shall cause J. Nevin White Lumber Co., Inc. to issue a note payable to plff. for the above amount, and personally and individually guarantee such note. Additionally, deft. shall give to plff. a first mortgage lien on defts.'s individually-owed Centre Co. and Juniata Co. timberlands as security for said obligation. Further, deft. shall pledge 50 percent of the capital stock of J. Nevin White Lumber Co., Inc. as security for the obligation. b. To the Defendant: 1) Defendant's individually owned interest in Timberland in Centre Co., with value of $694,500.00; 2) Defendant's individually-owned interest in timberland in Juniata Co., with value of $60,000.00; 3) Defendants individually-owned interest in timberland in Juniata Co. with valued at $15,000.00; 4) Capital stock of J. Nevin White Lumber Co., Inc. valued at $2,735,000.00; 5) The parties' jointly-owned bank account at Juniata Valley National Bank, having a value of $3,728.34; 6) the parties' jointly-owned cemetery lots, with value of $120.00.

3. No award of alimony will be granted to plaintiff, since she fails to meet the requisites of §501(a) of the divorce code.

4. Defendant will contribute $24,000.00 toward the payment of plffs. legal fees and expenses. Defendant will be solely and exclusively responsible for costs in excess of amounts currently on deposit with the prothonotary. Further, defendant shall reimburse plaintiff in the amount of $2000.00 for court costs.

By the court,
GEORGE E. HOFFER, J.

May 6, 1988, Final Divorce Decree Entered
/s/ GEORGE E. HOFFER, J.

May 23, 1988, Notice of Appeal filed:

Notice is hereby given that J. Nevin White, defendant, above named, hereby appeals to the Superior Court of Pennsylvania from the Divorce Decree and Equitable Distribution Order entered in this matter on the 6th day of May, 1988. This Order has been entered in the docket as evidenced by the attached copy of the docket entry.

Respectfully submitted,

ALBERT MOMJIAN, Esq.
RACHEL R. MUNAFO, Esq.
ARTHUR KUSIC, Esq.

May 23, 1988 Order for Transcript filed

June 1, 1988—#345 Hbg. 1988 assigned by the Superior Court of Pa.

May 2, 1989, Motion To Withdraw As Counsel, filed. Arthur A. Kusic, Esq. Att. Deft.

May 10, 1989-97 M.D. Allocation, Dt. 1989

Assigned by Supreme Court

Jul. 4, 1989—Order from Supreme Court filed

9/20/89—Motion for Pro Hoc Vin Granted

9/20/89—Petition Denied/per Curriam

Dec. 14, 1989, Order of Court, filed

AND NOW, December 14, 1989, the Court having scheduled an office conference this date with counsel to clarify outstanding issues, and Richard C. Snelbaker, Esquire, having appeared, and Benjamin V. R. Conlon, Esquire, not having appeared, we note that the Court has not been able to resolve any issue. Both counsel were notified to appear by letter dated November 15, 1989.

Hearing on the matter remanded by the Superior Court shall be held Monday, February 12, 1990, at 9:30 a.m. in Courtroom 3, Cumberland County Courthouse, Carlisle, Pennsylvania.

We direct that counsel for J. Nevin White shall supply to the Court and opposing counsel information concerning the specific Federal tax status of J. Nevin White Lumber Company, Inc. (i.e., whether a "C" or an "S" corporation, and date of election, if an "S" corporation); this information to be furnished by January 2, 1990.

We direct each counsel to supply a trial brief with the Court by January 22, 1990, outlining the following items:

(1) the name of each witness to be called, together with an offer of proof as to their testimony;

(2) an outline of the contentions of the parties on the issued remanded.

A pre-hearing conference with the attorneys shall be held on Friday, February 9, 1990, at 1:30 p.m. in Chambers.

Counsel for plaintiff shall send a copy of this order to the known office address of defendant's last-known counsel and to the defendant.

By the Court,
GEORGE E. HOFFER, J.

Jan. 3, 1990, Response To Order Of Court Of December 14, 1989 Requiring Information Regarding Tax Status Of Corporation, filed. Resp.

Jan. 4, 1990, Motion For Enforcement Of Prior Order, and Order of Court, filed.

AND NOW, this 4th day of January, 1990, upon consideration of the within Motion for Enforcement of Prior Order, it is ordered and directed that this Order shall serve as a rule upon the Defendant to show cause why he should not provide the following information: (a) the tax status of the J. Nevin White Lumber Company corporation (whether "C" or "S" and the date of election if "S"), and (b) a full explanation of the reason set forth in his Response to the Order of December 14, 1989, as to why he no longer has any official capacity or financial interest in said corporation.

Said rule to be returnable on the 19th day of January, 1990, at 3:00 o'clock P.M., prevailing time, in Court Room No. 3 of the Cumberland County Court House at Carlisle, Pennsylvania.

Service of a certified copy of this Order and the within Motion shall be made forthwith by the Attorney for Plaintiff by regular first-class mail upon the Defendant, J. Nevin White, and Benjamin V. R. Conlon, Esquire, Attorney for Defendant, addressed to their last known address.

By the Court,
GEORGE E. HOFFER, J.

Jan 16, 1990, Affidavit, filed, Roland S. Jones.

Feb. 26, 1990, Transcript To Be Lodged.

Mar. 2, 1990, ORDER OF COURT, filed. In Re: In Chambers Discussion

AND NOW, February 26, 1990, let the record reflect that the court met with counsel for the defendant, Benjamin Conlon, Esquire, in chambers in regard to plaintiff's request for certain documents. Although the plaintiff has received the yearly tax returns for the years May 1986 through May 1989, the corporate financial reports, allegedly prepared by Thomas Clark, CPA of Mifflintown, Pennsylvania, have not been forthcoming. We request that Mr. Conlon obtain these corporate financial reports and transmit the same to Mr. Snelbaker by close of business on March 2, 1990. If the reports are not forthcoming, we will enter-

tain an appropriate motion from the plaintiff dealing with the matter of obtaining the reports therein.

Although the contract between Nevin White and his corporation and the purported buyer, Euro-Ceramica, has been produced, several of the exhibits referred to in that contract were not attached to the contract. We direct Mr. Conlon to furnish the exhibits to plaintiff's counsel by March 12, 1990. We also direct Mr. Conlon to furnish copies of the notes used as consideration in this contract; we would not expect to receive the originals at this time, but do indicate to counsel that the originals may well be needed at the hearing of this matter.

Mr. Conlon is further directed to furnish any separate employment agreements regarding Nevin White and also any non-competition agreements regarding Nevin White.

Plaintiff's counsel has requested financial statements of Euro-Ceramica. Mr. Conlon suggests that the company will not be cooperative in this respect. We direct Mr. Conlon to furnish to the court documentation of his efforts to obtain such financial statements together with any responses from Euro-Ceramica.

By the Court,
GEORGE E. HOFFER, J.

Mar. 2, 1990, ORDER OF COURT, filed. In Re: Pretrial Hearing

AND NOW, February 9, 1990, 4:45 p.m., J. Nevin White, having appeared in court together with personal counsel, Benjamin V.R. Conlon, Esquire, and together with Mr. White's personal adviser, Roland S. Jones, and Richard C. Snelbaker, Esquire, having appeared on behalf of the plaintiff, and these people having appeared in response to our order of January 4, 1990, we note that certain testimony has been taken in a broad attempt to answer the questions raised in that order. We note that Mr. White has denied having personal possession of various of the documents requested and that his attorney, Mr. Conlon, has requested fifteen days to obtain various of these documents. We give the

defendant and his attorney fifteen days to obtain receipt of the requested documents as outlined on the separate sheet attached hereto (and we note that Mr. Conlon has this moment received this request for documents), and we direct Mr. Conlon and Mr. Snelbaker to appear in our office on Monday, February 26, 1990, at 1:00 p.m. to explain why any of the requested documents have not been furnished to that date.

We have considered an argument made on behalf of the defendant that we do not have jurisdiction to continue further in this case, and we do determine that we do have jurisdiction to continue hearing matters as directed to us by the Superior Court of Pennsylvania in their order of February 24, 1989.

By the Court,
GEORGE E. HOFFER, J.

Mar. 5, 1990, Transcript, filed.

Mar. 12, 1990, Motion For Subpoenas And Hearing, and ORDER OF COURT, filed.

AND NOW, this 12th day of March, 1990, on Motion for Subpoenas and Hearing by the Attorneys for Plaintiff, a hearing on the production of corporate financial reports of J. Nevin White Lumber Co. for the fiscal years ending May 1986 through May 1989 is hereby fixed for the 5th day of April, 1990, at 9:00 o'clock, A.M., prevailing time, in Court Room No. 3 of the Cumberland County Court House at Carlisle, PA.

The Prothonotary is directed to issue subpoenas directing the Defendant and Thomas Clark, CPA, of Mifflintown, PA., to appear at said hearing and to bring with them and produce to this Court and the Plaintiff the above mentioned reports.

A certified copy of this Order with Motion attached shall be served by Plaintiff's counsel upon Defendant's counsel by certified mail, return receipt requested.

By the Court,
GEORGE E. HOFFER, J.

Mar. 20, 1990, Motion For Production Of Information, filed, deft.

Apr. 6, 1990, ORDER OF COURT, filed.

AND NOW, this 6th day of April, 1990, upon consideration of the within Motion for Production of Information, it is ordered and directed that a Rule to show cause is issued upon Plaintiff to show cause this request should not be granted. Returnable 10 days from service.

1) Copies of federal tax returns for the years 1987, 1988, 1989 and/or other documentation that will reflect the exact and total income of the Plaintiff for the period in question.

2) Evidence showing all assets of every description owned by Plaintiff, either exclusively or jointly in the United States or any other jurisdiction, including but not limited to real estate, stocks, bonds, bank accounts (checking, savings, money market), investment funds, trust accounts.

3) The addresses of all places of residence used by Plaintiff, together with appraisal values, date of purchase, expenses incurred and dates that Plaintiff has been in residency in each location from the commencement of these proceedings. For each place of residence not owned by Plaintiff, provide copies of rental/lease agreement(s) for the period encompassed by these proceedings and the dates that Plaintiff has occupied such residence. Should any place of residence not be owned, rented or leased by Plaintiff, provide specifics as to ownership and arrangement where under Plaintiff resides therein.

4) Evidence showing Plaintiff's actual disbursements, expenses and living costs for the years 1987, 1988, 1989.

5) The names and addresses of all persons with whom Plaintiff has associated, coinhabited or consorted, thereby having received financial assistance, income, expenses and/or gifts since the commencement of these proceedings.

6) The exact amount of fees that Plaintiff has paid and/or for which Plaintiff will be making claim against Defendant for payment of her attorney in this matter, including detail of amounts of billing and dates of payment thereto.

A certified copy of this Order with Motion attached shall be served by Defendant's counsel upon Plaintiff's counsel by certified mail, return receipt requested.

By the Court,
GEORGE E. HOFFER, J.

Apr. 6, 1990, Complaint and Brief filed in United States District Court #1:CV-90-0590.

April 18, 1990, Answer to Motion for Production of Information filed

May 31, 1990, Praecipe Subsequent To Notice Of Motion and Order Of Court, filed.

AND NOW, May 31, 1990, after consideration of defendant's Motion for Production of Information and defendant's Answer thereto, the request for a hearing is refused. The Rule is dismissed.

By the Court,
GEORGE E. HOFFER, J.

June 7, 1990, Praecipe For Expedited Remand Hearing, filed.

AND NOW, comes the Defendant, J. Nevin White, by his counsel, Benjamin V.R. Conlon, Esq., to motion this Honorable Court to set down this matter for final determination as soon as it is practicable.

1. On or about the 4th day of June 1990, Her Honor, Judge Sylvia H. Ranbo, U.S. District Court Judge for the Middle District of Pennsylvania, dismissed this Defendant's application for a declaration, relevant to these proceedings.

2. Under the circumstances, the Defendant now requests that this Honorable Court set down this matter for hearing as soon as is practicable, at the convenience of the Court and Concurrence of both counsel.

BENJAMIN V.R. CONLON, ESQ.
Counsel for J. Nevin White

June 13, 1990, Order of Court, filed.

AND NOW, June 13, 1990, hearing in the above-captioned matter is fixed for Wednesday, August 22, 1990, in Courtroom 3 at 9:00 a.m.

By the Court,
GEORGE E. HOFFER, J.

July 12, 1990, Notice of Appeal and Grounds For Appeal filed in the United States District Court for the Middle District of Pennsylvania and therein docketed at 1:CV-90-590, filed.

July 12, 1990, Notice of Motion and Particulars Of Application For Reconsideration filed in the United States District Court for the Middle District of Pennsylvania and therein docketed at 1:CV-90-590, filed.

Aug. 30, 1990, Petition for Special Relief, and Order, filed.

AND NOW, this 30th day of August, 1990, upon consideration of the within Petition for Special relief and on motion of Snelbaker & Elicker, P.C., Attorneys for Plaintiff, a Rule is hereby issued on the following as Respondents (a) J. Nevin White (Defendant) (b) J. Nevin White Lumber Company, Inc. (c) Roland S. Jones (d) Credit-Line Financial Corp. (e) Euro-Ceramica, S.A., Hermenegildo Correia Da Costa, and Hernani Adre Bile Da Costa to show cause why the relief sought in the within Petition should not be granted, said Rule to be returnable as to all Respondents listed above on the 31st day of October, 1990, at 1:30 o'clock, P.M., in Court Room No. 3 of the Cumberland County Court House at Carlisle, Pennsylvania, at which date, time and place a hearing shall be held, and further said Rule to be returnable particularly with regard to Respondents listed in (a), (b) and (c) for the entry of temporary and preliminary relief on the 5th day of September, 1990, at 11:30 o'clock, A.M., E.D.S.T., in said Court Room No. 3. Service of a certified copy of this Order and the within Petition shall be served as follows: (1) By Personal service on Respondent (a) above. (2) By personal service on Respondent (b) above by handing to the person then in

charge of the corporation's office at Duncannon, PA. (3) By certified mail return receipt requested and by regular mail or by an established private express mail delivery service to Respondents (c), (d) and (e) above.

By the Court,
GEORGE E. HOFFER, J.

Sept. 5, 1990, Answer to Plaintiff's Petition for Special Relief, filed.

Sept. 6, 1990, Order, filed. IN RE: Equitable Distribution (Tax Consequences)

AND NOW, August 24, 1990, at 12:10 p.m., the plaintiff having completed her testimony, and the defendant having rested his case without the presentation of any testimony, we do consider the record to be closed as far as any presentation of testimony on the tax consequences of this equitable distribution. We direct that counsel for each party shall present to the court a proposed Order of Court covering all aspects of this case to be considered on remand, and we direct that this proposed order shall be given to the court in chambers by Friday, September 7, 1990. We offer the opportunity to either counsel to furnish supporting memoranda along with the proposed order. I direct that Mr. White post a cash bond in this case of $50,000.00, and that this be done no later than September 7, 1990.

By the Court,
GEORGE E. HOFFER, J.

Sept. 11, 1990, Order, filed. IN RE: Petition for Special Relief.

AND NOW, September 5, 1990, 12:30 p.m., the plaintiff having appeared with her counsel, Richard C. Snelbaker, Esquire, and having caused testimony to be presented in support of the petition, together with supporting exhibits, and the defendant not having appeared, but the court being put on notice that the defendant and his corporation were put on notice of this hearing by personal service made by Walter F. Junkins, Professional

Investigation Services, on August 30, 1990, at 11:15 a.m., and counsel further reporting that Roland S. Jones was served by regular mail and certified mail, said mailings being made on August 30, 1990, and the court believing that Roland S. Jones has received notice of the hearing today by his personal appearance earlier in the Judge's chambers to deliver the defendant's answer to "Plaintiff's Petition for Special Relief" and also "Defendant's Brief", both of which are signed by Benjamin V. R. Conlon, we do find as a fact that the defendant, J. Nevin Whit, the J. Nevin Whit Lumber Company, Inc., and that Roland S. Jones, all have personal knowledge and service of the hearing date today. After hearing and consideration of the testimony presented, we order and direct as follows: 1. We order and direct the defendant to pay to the plaintiff forthwith the amount of $41,430.00 on account of accrued counsel fees, accountant's fees and appraisal and witness fees; 2. We order and direct the defendant to pay to the plaintiff forthwith, on account of moneys due her for marital property, the sum of $30,000.00, and we further direct that the defendant pay to the plaintiff, from this date on, the sum of $500.00 per week as alimony *pendente lite*; 3. We enjoin the defendant from disposing of any marital assets, and from disposing of the product or replacement of any converted marital assets. This injunction shall remain in effect until further Order of Court; 4. We enjoin Roland S. Jones from dealing with any of the marital assets, or the product or replacement of converted marital assets; 5. We enjoin Credit Line Financial Corporation from disposing of any marital assets derived from the defendant, or the product or replacement of converted marital assets; 6. We direct that a constructive trust shall be immediately imposed on all of the defendant's assets; 7. We impose a constructive trust on all assets of the J. Nevin White Lumber Company, Inc. and we authorize the filing of appropriate public notice thereof as liens or *lis pendens* in the office of the Prothonotarys and Recorder of Deeds in all jurisdictions where assets are known to exist; 8. We direct that the sales and conveyances and assignments of mortgages of defendant's real estate in Centre County and Juniata County, Pennsylvania, as manifested

in Plaintiff's Exhibits 15, 16, 17, 18, 19, 20, and 21, shall be set aside, rescinded, and canceled, as frauds upon the court. 9. We order and direct that the defendant shall post a bond, in the form of cash or security approved by the court, in the amount of $1,300,000, to assure performance of any final decree of distribution, and that the defendant shall post this bond within ten days of the service of this order upon him; At the request of the plaintiff for more time to submit the suggested order of distribution, previously requested by this court by September 7, 1990, we do grant an extension of time to either party to file such order, and that shall be for a period of 30 days from September 7, 1990.

By the Court,
GEORGE E. HOFFER, J.

Sept. 13, 1990, Petition for Special Relief, and Order, filed.

AND NOW, this 13th day of September, 1990, upon consideration of the within Petition for Special Relief, the Sheriff of Cumberland County, Pennsylvania (and the Sheriff of any other County in this Commonwealth as deputized by the Sheriff of Cumberland County) shall attach the person of J. Nevin White, Defendant herein, and bring him before this Court on the 27th day of September, 1990, at 8:30 o'clock a.m., prevailing time, to Court Room No. 3 of the Cumberland County Court House at Carlisle, Pennsylvania, at which time and place a hearing will be held to show cause why Defendant should not be held in contempt of this Court and appropriate sanctions imposed.

By the Court,
GEORGE E. HOFFER, J.

Appendix K—Notice of Appeal of Judge Hoffer's Order of September 13, 1990 (Dated Sept. 24, 1990)

IN THE

COURT OF COMMON PLEAS OF CUMBERLAND COUNTY, PENNSYLVANIA

WILLA E. WHITE,

Plaintiff/Appellee

v.

J. NEVIN WHITE,

Defendant/Appellant

CIVIL ACTION—LAW
NO. 4730 CIVIL 1981

NOTICE OF APPEAL

Notice is hereby given that J. Nevin White, Defendant above named, hereby appeals to the Superior Court of Pennsylvania from the Order of His Honor, Judge George E. Hoffer, Court of Common Pleas of Cumberland County, Pennsylvania dated 13th day of September, 1990 granting to the Petitioner/Appellee special relief and directing that the Sheriff of Cumberland County or any other county in the Commonwealth of Pennsylvania attach the person of the Defendant/Appellant and bring him before the

said Court of Common Pleas of Cumberland County on the 27th day of September, 1990 at 8:30 A.M. to show cause why the said Defendant/Appellant should not be found in contempt of court. This Order has been entered in the docket as evidenced by the attached copy of the docket entry.

Further take notice that the Defendant/Appellant appeals to the Superior Court of Pennsylvania and requests that the aforementioned Order of His Honor, Judge Hoffer, dated September 13, 1990 be stayed forthwith.

Respectfully submitted,

J. NEVIN WHITE
Defendant/Appellant
P. O. Box 2575
Salisbury, MD 21801
1-800-227-5018

TRUE COPY FROM RECORD

In Testimony whereof, I here untō set my hand and the seal of said Court at Carlisle, Pa. This 24th day of Sept., 1990.

SHIRLEY A. PEIPER
Dpty Prothonotary

Dated this 24 day of September, 1990

Appendix L—Application for Writ of Prohibition to Superior Court (Pa.) Dated September 25, 1990

IN THE

SUPERIOR COURT OF PENNSYLVANIA

Miscellaneous Docket No. ____

J. NEVIN WHITE,

Applicant

v.

THE COURT OF COMMON PLEAS,
CUMBERLAND COUNTY, PENNSYLVANIA,

Respondent

APPLICATION FOR AN EXTRAORDINARY WRIT OF PROHIBITION

In the matter of an application for an Extraordinary Writ of Prohibition to the Court of Common Pleas, Cumberland County, Pennsylvania, that it is prohibited from acting Ultra Vires by

determining the order of His Honor, Judge George E. Hoffer, dated September 13, 1990, in the case of Willa E. White v. J. Nevin White, No. 4730 Civil 1981.

J. NEVIN WHITE
Defendant/Applicant
P.O. Box 2575
Salisbury, Maryland 21801
1-800-227-5018

SUPERIOR COURT OF THE COMMONWEALTH OF PENNSYLVANIA

J. NEVIN WHITE,

Applicant

v.

THE COURT OF COMMON PLEAS, CUMBERLAND COUNTY, PA.,

Respondent.

Miscellaneous Docket No.

PETITION FOR EXTRAORDINARY WRIT OF PROHIBITION

TO THE SUPERIOR COURT OF THE COMMONWEALTH OF PENNSYLVANIA

I, J. NEVIN WHITE, the above-named Applicant, do hereby make application to this Honorable Court for an Extraordinary Writ of Prohibition and do represent that:

1. The order of His Honor, Judge George E. Hoffer, dated September 13, 1990 (Appendix A) is the furtherance of the Learned Judge's conduct of ignoring submissions as to his jurisdiction and acceding to the applications of counsel for the Petitioner, Willa E. White, regardless of their merit or relevance in law.

2. Applications to His Honor, Judge Hoffer, on behalf of the Applicant/Defendant J. Nevin White have been made and have consistently been denied without explanation. Furthermore, the Learned Judge has consistently refused to make any ruling or determination as to whether or not the Decree of Divorce granted by him to the parties on May 6, 1988 was obsolute or not, thereby failing to determine the precise nature of the proceedings.

3. Under the laws of the Commonwealth of Pennsylvania no equitable distribution of matrimonial property can be made unless and until the Decree in Divorce has been made absolute. His Honor, Judge Hoffer has yet to declare that the decree is absolute and, therefore, he had no jurisdiction to hear any evidence or make any determination until he so decreed.

4. The Learned Judge has relied upon the jurisdiction granted to him by the order of this Honorable Court in an appeal judgment dated February 24, 1989 and later affirmed by the Supreme Court on September 25, 1990 (Appendix B & C). Such jurisdiction could only be effective once the Decree for Divorce was absolute.

5. After Counsel for the Defendant/Applicant was notified of a pretrial conference to be held, on Friday, February 9, 1990 (Appendix D), His Honor, Judge Hoffer purported to conduct a hearing which he described as "an interlocutary pretrial hearing" (Appendix E). In that hearing, the Court was told by Counsel for Willa E. White that the Decree was not final (Appendix E, Page 9, Line 17 to page 10, Line 21). Thereafter Judge Hoffer refused to consider any matters with regard to jurisdiction.

6. His Honor, Judge Morrison of the Court of Common Pleas for Dauphin County, Divorce Support Division, on being advised of the existence of a Divorce Decree by Counsel for J. Nevin White suspended all further payments to the said Willa E. White, whilst he considered his court's jurisdiction and the status of the Divorce Decree.

7. In furtherance of determination of the Decree of Divorce, dated May 6, 1988, an application for a Declaratory Judgment was made by the Applicant/Defendant to the U.S. District Court which is now under appeal to the U.S. Court of Appeals of the Third Circuit.

8. His Honor, Judge Hoffer further purported to conduct remand hearings on August 22 and 24, 1990 at the Court of Common Pleas, Cumberland County pursuant to the remand order of this Honorable Court, having denied all applications for discovery to the Applicant/Defendant in respect of the assets, disbursements and liabilities of the Petitioner, Willa E. White, thereby rendering the Defendant unable to make any examination in court of the said Willa E. White.

9. The Court granted an application by Counsel for the Petitioner for a payment of $50,000 as a cash bond to be paid into court on or before September 7, 1990. Additionally, both counsel were to submit proposed orders and supporting briefs on or before that same date. The brief for the Applicant/Defendant was timely submitted, but His Honor, Judge Hoffer granted an ex parte application for extension by Petitioner's Counsel for extension of time to submit the said brief (Appendix F).

10. On the 30th day of August 1990, His Honor, Judge Hoffer alllowed Counsel for the Plaintiff to issue a Petition for Special Relief (Appendix G) which is now challenged and subject of appeal (Appendix H.). The basis for the Petition for Relief is ill-founded and unlawful. Furthermore, its content is ambiguous and contradictory. In particular, the Order of the Court dated September 5, 1990 granted relief sought in the said Petition of August 30, 1990, prior to September 7, 1990 and appears to supercede the Court's order that the Applicant/Defendant pay $50,000 into court on or by September 7, 1990, as per the Court's order of August 24, 1990 (Appendix I).

11. The Applicant submits that until such time as His Honor, Judge George E. Hoffer determines that the Decree in Divorce is absolute, he lacks any jurisdiction. He has acted Ultra Vires and all of his orders are void or voidable. The Learned Judge's conduct has to be examined as to whether his orders and determinations of law in this matter have been:

(a) by error of law, or

(b) an arbitrary and capricious use of discretion

12. In Judge Hoffer's order of September 13, 1990 (Appendix J), he has ordered that "the Sheriff of Cumberland County, Pennsylvania (and the Sheriff of any other County of this Commonwealth as deputized by the Sheriff of Cumberland County) shall attach the person of J. Nevin White, and bring him before this Court . . ." Throughout the proceedings, including an action to show cause in Dauphin County, dated December 11, 1989, the Applicant, J. Nevin White, has always appeared as directed. There is, therefore, no grounds for Judge Hoffer to impose such an order on Mr. White and it is submitted that this is a capricious use of discretion by Judge Hoffer since the evidence does not support the use of any such discipline to secure the attendance of Mr. White at court.

13. The Applicant contends that Judge Hoffer's order of September 13, 1990 was void by virtue of the matters set out above. In the alternative, the Show Cause Order and Petition for Special Relief, dated August 30, 1990, and the Order of the Court, dated September 5, 1990, in respect to the said Petition for Special Relief (which is also void) superceded and contradicted the Judge's order for payment of $50,000 by September 7, 1990.

14. His Honor, Judge Hoffer's continued refusal to consider his jurisdiction and the law in this case jeopardizes the Applicant's/Defendant's right to due process.

WHEREFORE, the Applicant prays that an order be issued by this Honorable Court that:

(a) prohibits the Court of Common Pleas, Cumberland County, Pennsylvania from conducting any further proceedings in the case entitled Willa E. White v. J. Nevin White, No. 4730 Civil 1981, forthwith.

(b) requires judicial review of all the proceedings in the above-mentioned case.

(c) stays all of said proceedings forthwith until further order of this Honorable Court.

Respectfully submitted,

J. NEVIN WHITE
Applicant
P.O. Box 2575
Salisbury, Maryland 21801
1-800-227-5018

Dated this 24 day of September, 1990

CERTIFICATE OF SERVICE BY MAIL

Roland S. Jones, being duly sworn, says that he today deposited copeis of the annexed Application For An Extraordinary Writ of Prohibition in a United States Post Office in Camp Hill, Pennsylvania, enclosed in envelopes, with first-class postage prepaid, duly addressed to the following, pursuant to PA. R.A.P. 121:

The Honorable George E. Hoffer
Cumberland County Courthouse
P.O. Box 189
Carlisle, PA 17013

Gary Hollinger, Court Administrator
Cumberland County Courthouse
P.O. Box 189
Carlisle, PA 17013

Prothonotary for Cumberland County
Cumberland County Courthouse
P.O. Box 189
Carlisle, PA 17013

ROLAND S. JONES
Dated this 25th day of September, 1990.

Sworn to and subscribed before
me this 24th day of September, 1990.
BARBARA J. BACH
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires August 7, 1994

EXHIBITS ORIGINALLY ATTACHED
TO THE INSTANT APPENDIX HAVE
BEEN OMITTED HEREIN TO PREVENT
DUPLICATION

Appendix M—Application for Writ of Mandamus to Superior Court (Pa.) Dated September 25, 1990

IN THE

SUPERIOR COURT OF PENNSYLVANIA

Miscellaneous Docket No. ____

J. NEVIN WHITE,

Applicant

v.

THE COURT OF COMMON PLEAS,
CUMBERLAND COUNTY, PENNSYLVANIA,

Respondent

APPLICATION FOR A WRIT OF MANDAMUS

In the matter of an application for a Writ of Mandamus to the Court of Common Pleas, Cumberland County, Pennsylvania relative to the order of His Honor, Judge George E.

Hoffer, dated September 11, 1990 in Civil Action—Law No. 4730 Civil 1981, Willa E. White v. J. Nevin White, was *Ultra Vires* and that the said order is to be vacated forthwith.

J. NEVIN WHITE
Defendant/Applicant
P.O. Box 2575
Salisbury, Maryland 21801
1-800-227-5018

SUPERIOR COURT OF THE COMMONWEALTH OF PENNSYLVANIA

J. NEVIN WHITE,

Applicant

v.

THE COURT OF COMMON PLEAS,
CUMBERLAND COUNTY, PA.,

Respondent.

Miscellaneous Docket No.

PETITION FOR WRIT OF MANDAMUS

TO THE SUPERIOR COURT OF THE COMMONWEALTH OF PENNSYLVANIA

I, J. NEVIN WHITE, the above-named Applicant, do hereby make application to this Honorable Court for a Writ of Mandamus and do represent that:

1. By virtue of the order of the Supreme Court of Pennsylvania of September 25, 1989, attached hereto in Appendix A, the said Supreme Court affirmed an earlier decision of this Honorable Court, No. 345, Harrisburg 1988, dated February 24, 1989, (Appendix B) vacating the order of His Honor, Judge Hoffer dated May 6, 1988 with regard to equitable distribution and

remanded the matter for the court to consider the tax consequences of such an order. (Also see Appendix C, correspondence with Judge Tamila of this Court.)

2. On August 30, 1990, the Plaintiff, Willa E. White, through her attorney, made an application to the said Judge Hoffer for Special Relief (Appendix D) to which this Defendant/Applicant answered (Appendix E). Thereafter, on September 5, 1990, His Honor, Judge Hoffer issued the order subject to this application (Appendix F).

3. To date, His Honor, Judge Hoffer has failed to acknowledge that the Divorce Decree granted by him on May 6, 1989 (Appendix G) was Absolute. In a pretrial hearing on Friday, February 2, 1990, the said Judge Hoffer refused to properly consider legal submissions as to his jurisdiction, with regard to proceedings remanded by the Superior Court and determined that his sole jurisdiction was to . . . "take testimony on the issue of tax consequences if my original order on Mr. White is to be followed? . . . (Page 6, Line 25 and Page 7, Line 3 of Appendix H), thereby acknowledging his own restricted jurisdiction. By virtue of His Honor, Judge Hoffer's order of September 5, 1990, the Learned Judge has exceeded his own jurisdiction directed by the order of this Honorable Court, dated the 24th day of February 1989 (Appendix B), thereby acting *Ultra Vires*.

WHEREFORE, in view of the matters set out above, Applicant prays that an order be issued by this Honorable Court commanding the Court of Common Pleas of Cumberland County, Pennsylvania to rescind and/or vacate the order of His Honor, Judge Hoffer, dated September 5, 1990, and reinstate all relevant records accordingly.

FURTHERMORE, Applicant prays that all said proceedings be stayed forthwith until further order of this Honorable Court.

Respectfully submitted,
J. NEVIN WHITE
Applicant
P.O. Box 2575
Salisbury, Maryland 21801
1-800-227-5018

Dated this 24 day of September, 1990

CERTIFICATE OF SERVICE BY MAIL

Roland S. Jones, being duly sworn, says that he today deposited copeis of the annexed Application For A Writ of Mandamus in a United States Post Office in Camp Hill, Pennsylvania, enclosed in envelopes, with first-class postage prepaid, duly addressed to the following, pursuant to PA. R.A.P. 121:

The Honorable George E. Hoffer
Cumberland County Courthouse
P.O. Box 189
Carlisle, PA 17013

Gary Hollinger, Court Administrator
Cumberland County Courthouse
P.O. Box 189
Carlisle, PA 17013

Prothonotary for Cumberland County
Cumberland County Courthouse
P.O. Box 189
Carlisle, PA 17013

ROLAND S. JONES

Dated this 25th day of September, 1990.

Sworn to and subscribed before
me this 24th day of September, 1990.
BARBARA J. BACH
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires August 7, 1994

EXHIBITS ORIGINALLY ATTACHED
TO THE INSTANT APPENDIX HAVE
BEEN OMITTED HEREIN TO PREVENT
DUPLICATION

Appendix N—Counsel's Request For Adjournment of Hearing on May 3, 1992

BENJAMIN V. R. CONLON
Barrister—Attorney at Law
Law Offices in New York and London, England

(Administrative Offices)
P.O. Box 2575
Salisbury, MD 21801
1-800-227-5018
Fax: (410) 546-5882

May 6, 1992

Honorable George E. Hoffer
Judge, Court of Common Pleas
Cumberland County Courthouse
Carlisle, PA 17013
Fax: (717) 240-6490

Re: White v. White, No. 4730 Civil 1981

Dear Judge Hoffer:

Subsequent to my receipt of your fax of yesterday afternoon and our brief telephone conversation concerning the order of the court requiring my attendance and that of my client, J. Nevin White, before your court at 11:30 A.M. on Friday, May 8, 1992, regrettably, I am unable to attend as I am scheduled as assigned counsel to appear before His Honor Judge Peter Feldstein in Essex County Court (New York) in a criminal matter which has already been adjourned three (3) times. The Defendant in that matter, David Shumway is presently in Florida and is specifically returning to the State to appear before the court for sentencing.

In addition to my unavailability on Friday, May 8, I am scheduled to be in Essex County Court before His Honor Judge Dawson on Monday, May 11 and Monday, May 18. All of these are criminal matters in which I appear as assigned counsel. As you know, precedent is always given to criminal cases in particular those in which defendants are represented by counsel appointed by the court and paid out of public funds. For your convenience in rescheduling this hearing, I am attaching a list of my immediate commitments.

Upon examination of your order, it is of concern to me that it does not give me or my client sufficient information for adequate preparation. You advised me in the phone conversation that it was concerning the case but would say no more. This case originated in 1981 and has many facets to it and more than one order has flowed from Your Honor. My client and I are entitled to have some specific notice as to the Court's intention rather than ". . . for the issuance of an order in the current proceedings", to enable proper and adequate representation. Accordingly, I wish to place on the record that notice given to me and my client is too short and inadequate in its context for proper representation.

Since it will not be possible for me to attend, I anticipate that Your Honor would not require my client to appear without me. Indeed, I am advising Mr. White forthwith of my communications with you and my request for a rescheduling.

If I can be of further assistance to the Court, please do not hesitate to contact me. Today, you can reach me at my New York office (518) 873-9178 or by fax at (518) 873-3255.

Sincerely,

BENJAMIN V. R. CONLON, ESQ.
(Counsel for J. Nevin White)

cc: RSJ
JNW
RCS

SCHEDULE FOR EARLY MAY, 1992
BENJAMIN V. R. CONLON, ESQ.

Monday, May 4, 1992:

Essex County Court (criminal) People v. Martin Chase (Assgnd. counsel)

Wednesday, May 6, 1992:

Lake Placid Village Court, People v. Brian Carpenter (Assgnd. counsel)
Meeting (5:30 P.M.) Village Board of Dannemora & M/M Linton Re: proposed action against Design Homes Inc.

Thursday, May 7, 1992:

Family Court conference with Judge Dawson and Ass't County Attorney Re: Case of Linsey (2:30 P.M.)

Friday, May 8, 1992:

Essex County Court (11:00 A.M.) Judge Peter Feldstein, People v. David Shumway (Assgnd. counsel)

Monday, May 11, 1992:

Essex County Court, Judge Dawson, People v. Robert Cronin (10:30 A.M.) Assgnd. counsel

Tuesday, May 12, 1992:

Chestertown Village Court, People v. Todd Murphy
Crown Point Town Justice Court, People v. Gary Lang Assgnd. counsel

Monday, May 18, 1992:

Essex County Court, Judge Dawson, People v. Robert Cronin, Assgnd. counsel

Appendix P—Order of Judge Hoffer—Dated May 8, 1992

IN THE

COURT OF COMMON PLEAS OF CUMBERLAND COUNTY, PENNSYLVANIA

WILLA E. WHITE,

Plaintiff

v.

J. NEVIN WHITE,

Defendant

CIVIL ACTION—LAW
NO. 4730 CIVIL 1981

ORDER OF COURT

AND NOW, May 8, 1992, upon consideration of Plaintiff's Petition for Special Relief and the evidence produced at the prior hearing, the Court finds:

A. That due and timely notice of the petition and hearing was given to each respondent named in the petition;

B. That this Court has jurisdiction over the subject matter of this proceeding;

C. That only the defendant-respondent filed a response to the petition;

D. That none of the respondents appeared at the hearing nor were any of them represented by counsel;

E. That the averments in the petition are true;

F. That defendant-respondent's conduct with respect to his capital stock of and in J. Nevin White Lumber Co., Inc., and his real estate in Centre County and Juniata County, Pennsylvania, demonstrates that his clear purpose is to dispose of or shelter said property from the interest and rights of plaintiff-petitioner and to defeat her rights to obtain appropriate equitable distribution of marital property;

F. That the need for equitable and injunctive relief, including the appointment of a trustee in receivership, is clear, immediate and necessary in order to prevent greater injury; and

Further, the Court orders and directs pursuant to Sections 401 and 403 of the Divorce Code as follows:

1. We confirm and reaffirm the orders and directions contained in this Court's order of September 5, 1990, and incorporate herein paragraphs numbered 1 through 9 by reference thereto as though set forth fully and at length herein;

2. We order and direct that the sale and transfer of defendant-respondent's capital stock of and in J. Nevin White Lumber Company, Inc., to Euro-Ceramica S.A. and/or Hermanegildo Correia Da Costa and/or Hernani Andre Bile Da Costa be and is

hereby set aside, rescinded and cancelled as a fraud upon the court;

3. We hereby appoint Edward W. Harker, Esquire as Trustee in Receivership (a) to seize, possess, receive, manage and preserve the defendant-respondent's capital stock of and in J. Nevin White Lumber Company, Inc., and (b) to seize, possess, manage and preserve the assets of J. Nevin White Lumber Company, Inc., and (c) to seize, possess, manage and preserve the defendant-respondent's real estate in Centre County and Juniata County, Pennsylvania (being the lands identified in the petition), and (d) to take any and all further actions as may be necessary to preserve the status quo of the marital property owned or controlled by defendant-respondent;

4. We specifically enjoin defendant-respondent and Roland S. Jones, or anyone acting on their behalf, from interfering with the above Trustee's performance of his duties, and we further direct said individuals to forthwith deliver to said Trustee in Receivership all books, records, monies, accounts and all other property whatsoever of J. Nevin White Lumber Co., Inc.;

5. We order and direct the Trustee in Receivership to post bond in the amount of $50,000.00 with corporate surety to be approved by the Court as, a condition of his qualification hereunder; and

6. We order and direct that the fees, costs and expenses incurred by the Trustee in Receivership shall be paid by the defendant-respondent, the remaining deposit with this Court to be used for payment on account thereof.

7. We fix the Receiver's compensation at $100.00 per hour.

By the Court,
GEORGE E. HOFFER, J.

RICHARD C. SNELBAKER, ESQUIRE
44 West Main Street
Mechanicsburg, PA 17055

J. NEVIN WHITE
P.O. Box 99
Duncannon, PA 17020

J. NEVIN WHITE
805 River House Apartments
2311 North Front Street
Harrisburg, PA 17110

BENJAMIN V. R. CONLON, ESQUIRE
c/o Roland Jones
P.O. Box 2575
Salisbury, MD 21801-2575

EDWARD W. HARKER, ESQUIRE
1 West High Street
Carlisle, PA 17013

TRUE COPY FROM RECORD

In Testimony whereof, I here unto set my hand and the seal of said Court at Carlisle, Pa. This 10th day of June, 1992.

JULIE M. OR??
Prothonotary

Appendix Q—Letter from Staff Attorney to Superior Court (Pa.)—Dated Sept. 29, 1992

September 29, 1992

Jerry A. Philpott, Esquire
227 North High Street
P.O. Box 116
Duncannon, PA 17020-0116

RE: *White v White*
No. 511 Harrisburg 1992

Dear Mr. Philpott:

Upon review of the docketing statement in the instant case, it appears that the appeal may be interlocutory. Because the matter of equitable distribution is still ongoing, the parties have not been placed out of court, so as to render the order final and appealable. Also, Pa.R.C.P. 311 (a) (2), specifically excludes from appealability, orders entered pursuant to 23 P.S. §401 (c) and 403 (a).

Please respond *in writing*, within 10 days of the date of this letter. Failure to do so may result in dismissal of this case for the reason cited above. Because *ex parte* communication with this office is prohibited, if you have any questions concerning this matter, please contact me in writing with notice to all interested counsel.

Very truly yours,

DAWN C. TERAK
Staff Attorney

cc: Richard C. Snelbaker, Esquire
Edward W. Harker, Esquire

Appendix R—Judge Hoffer's Show Cause Order of August 7, 1992

IN THE

COURT OF COMMON PLEAS OF CUMBERLAND COUNTY, PENNSYLVANIA

WILLA E. WHITE,

Plaintiff

v.

J. NEVIN WHITE,

Defendant

CIVIL ACTION—LAW
NO. 4730 CIVIL 1981

ORDER OF COURT

AND NOW, this 7th day of August, 1992, upon consideration of the within Petition and on motion of Snelbaker & Brenneman, P.C., it is ordered and directed that a Rule is hereby issued on J. Nevin White, Defendant herein, to show cause why the Orders of this Court entered September 5, 1990, and May 8, 1992, should not be enforced and why he should not be held in contempt of this Court for failure to abide therewith. This order shall be the Rule issued as aforesaid.

Rule returnable at a hearing to be held on the 26th day of August, 1992, at 3:00 o'clock P.M., prevailing time, in Court Room No. 3 of the Cumberland County Court House at Carlisle, Pennsylvania.

Service of a certified copy of this Order/Rule shall be served upon the Defendant and all counsel of record by both certified mail (return receipt requested) and regular first class mail.

By the Court,
/S/ GEORGE E. HOFFER, J.

TRUE COPY FROM RECORD

In Testimony whereof, I here unto set my hand and the seal of said Court at Carlisle, Pa. This 7th day of August, 1992.

ELIZABETH A. WALTERS
Dpty. Prothonotary

Appendix S—Application for Extraordinary Writ of Prohibition to Superior Court (Pa.) Dated August 25, 1992

IN THE

SUPERIOR COURT OF PENNSYLVANIA

Miscellaneous Docket No. ____

J. NEVIN WHITE,

Applicant

v.

THE HONORABLE GEORGE E. HOFFER, (Judge of the Court of Common Pleas) (Commonwealth of Pennsylvania)

Respondent

APPLICATION FOR AN EXTRAORDINARY WRIT OF PROHIBITION

In the matter of an application for an Extraordinary Writ of Prohibition to His Honor Judge George E. Hoffer, a judge of the Court of Common Pleas, in the Commonwealth of Pennsylvania, prohibiting him from further sitting as a judge of the said Court of

Common Pleas, at Carlisle, Cumberland County in the case entitled "Willa E. White v. J. Nevin White, No. 4730 Civil 1981"

J. NEVIN WHITE
Applicant, *Pro Se*
P.O. Box 99
Duncannon, PA 17020
(717) 834-4242

IN THE

SUPERIOR COURT OF THE COMMONWEALTH OF PENNSYLVANIA

J. NEVIN WHITE,

Applicant, Pro Se

V.

THE HON. GEORGE E. HOFFER, Judge of the Court of Common Pleas for the Commonwealth of Pennsylvania

Respondent

Miscellaneous Docket No.

PETITION FOR AN EXTRAORDINARY WRIT OF PROHIBITION

TO THE SUPERIOR COURT OF THE COMMONWEALTH OF PENNSYLVANIA:

I, J. NEVIN WHITE, as Applicant, *Pro Se*, do hereby make unto this Honorable Court an application for an Extraordinary Writ of Prohibition and do represent that:

1. The Respondent is a duly elected judge of the Court of Common Pleas of the Commonwealth of Pennsylvania. Judge Hoffer sits at Carlisle, in Cumberland County.

2. At all relevant and material times the Respondent has been the judge presiding over divorce proceedings initiated by my wife in the aforesaid Court of Common Pleas, Carlisle, Cumberland County. The said divorce is filed and docketed as "Willa E. White v. J. Nevin White, Civil Law—Divorce, Case No. 4730 of 1981 (hereinafter to be referred to as the "divorce").

3. On Monday, August 24, 1992, Roland S. Jones, who I had previously retained as a business consultant to assist me in the financial implications, reorganization and planning of the consequences of the said divorce, filed a complaint in the U.S. District Court for the Middle District of Pennsylvania (attached hereto as "Exhibit 1").

4. The said complaint filed in the U.S. District Court (Exhibit 1) cites Judge Hoffer as the First Defendant and alleges that he, with the other Defendants, contravened the Federal RICO Statutes and deprived the said Roland S. Jones of his civil rights by denying him due process.

5. The body of the allegation contained in Exhibit 1 (hereinafter to be referred to as the "Federal Complaint") surrounds the involvement of Mr. Jones in the divorce proceeding in which he was retained as my advisor. Mr. Jones asserts that at all times he acted *bona fides*, seeking to act within the ambit of the Laws of the Commonwealth of Pennsylvania and in particular within the provisions of the order of this Honorable Court which was later confirmed by the Supreme Court of Pennsylvania (see appellant orders attached hereto as "Exhibit 2a" and "Exhibit 2b").

6. I have sought legal advice as to the effect of this Federal Complaint and it is my belief that the nature of the allegations by Mr. Jones have merit which needs to be examined in the context of Judge Hoffer's conduct in the divorce proceedings.

7. My concern is that whether or not Mr. Jones succeeds in his action against this Respondent, it is impossible for the objective mind to exclude any bias by Judge Hoffer against me in the divorce proceedings.

8. In the alternative to that set out in Paragraph 7 above of this petition, if Mr. Jones succeeds in his Federal Complaint against the Defendants, the whole of the divorce proceedings may be voided from the point where Judge Hoffer was initially seized with the case, by which time I will have suffered irreparable harm.

9. In the context of these federal proceedings (via the Federal Complaint), my counsel in the divorce action before the Respondent has written to Judge Hoffer requesting an urgent motion recusing himself from sitting in any further proceedings in the matter of my divorce (see letter attached hereto as "Exhibit 3a" and motion to recuse attached hereto as "Exhibit 3b").

10. Judge Hoffer has issued an order on motion by my wife's counsel (said counsel appearing as co-defendant with Respondent in the Federal Complaint) returnable on Wednesday, August 26, 1992 as to why I should not be held in comtempt, attached hereto as "Exhibit 4".

11. Counsel representing me in the said divorce proceedings has replied to the said show-cause order, attached hereto as "Exhibit 5".

12. Regardless of the representations made on my behalf to the Respondent (in Exhibits 3a, 3b & 5) he continues to preside over my divorce proceedings.

13. I respectfully draw to the attention of this Honorable Court Canon I and Canon 2 of the Code of Judicial Conduct of the Laws of the Commonwealth of Pennsylvania.

CANON 1: *"A judge should uphold the integrity and independence of the judiciary."*

CANON 2: *"A judge should avoid impropriety and the appearance of impropriety."*

This Petitioner, *Pro Se*, respectfully submits that Judge Hoffer's continued involvement in this case is in breach of both of the above Canons of Judicial Conduct.

14. Additional to the matters to which I have referred this Honorable Court in this petition above, I respectfully seek to rely upon 28 U.S.C. § 455(a) which states as follows:

"Any justice, judge, or magistrate of the United States shall disqualify himself in any proceedings in which his impartiality might reasonably be questioned."

15. Pursuant to 28 U.S.C. § 455(a), as set out in Paragraph 14 above of this application, this petitioner submits that no objective examination of the divorce proceedings in the context of the Federal Complaint by Mr. Jones against Judge Hoffer would be able to reasonably conclude total impartiality by the Respondent continuing to sit as judge, especially with the knowledge of Judge Hoffer that Petitioner was responsible for retaining the services of Mr. Jones.

IN THE PREMISES OF THE ABOVE, THIS PETITION AND ITS EXHIBITS ATTACHED HERETO, PETITIONER RESPECTFULLY PRAYS THAT THIS HONORABLE COURT:

1) prohibit Judge George E. Hoffer from sitting as a judge of the Court of Common Pleas in the case of Willa E. White v. J. Nevin White, Civil Law—Divorce, 4730 of 1981, forthwith.

2) prohibit the said Respondent, Judge George E. Hoffer, from sitting as judge in any matter whatsoever in which this Applicant is involved until final determination of the Federal Complaint of Roland S. Jones or further order of this Honorable Court.

3) order forthwith judicial review of the proceedings and other matters within the jurisdiction of this Honorable Court, relied upon by this Applicant in this petition.

4) order that all proceedings and orders of said Respondent be stayed forthwith.

5) order that reasonable costs and disbursements of bringing this application be awarded to the Petitioner.

6) make such order as this Honorable Court deems fit in all the circumstances of this case.

Dated this 26th day of August, 1992.

Respectfully submitted.

J. NEVIN WHITE
(Applicant, Pro Se)
P.O. Box 99
Duncannon, PA 17020
(717) 834-4242

CERTIFICATE OF SERVICE BY MAIL

Sharon A. Burd, being duly sworn, says that she today deposited copies of the annexed "Petition For An Extraordinary Writ of Prohibition" in the United States Post Office in Duncannon, Pennsylvania, enclosed in envelopes, with first-class postage prepaid, duly addressed to the following, pursuant to PA. R.A.P. 121:

The Honorable George E. Hoffer
Court of Common Pleas
Cumberland County Courthouse
Carlisle, PA 17013

Court Administrator
Court of Common Pleas
Cumberland County Courthouse
Carlisle, PA 17013

Prothonotary for Cumberland County
Cumberland County Courthouse
Carlisle, PA 17013

SHARON A. BURD

Dated this 26th day of August, 1992.

Sworn to and subscribed before me this
26th day of August, 1992.
KENNETH ELLENBERGER, JR.
Notary Public
My commission expires: June 27, 1994

EXHIBITS ORIGINALLY ATTACHED
TO THE INSTANT APPENDIX HAVE
BEEN OMITTED HEREIN TO PREVENT
DUPLICATION

Appendix T—Application For Emergency Stay to Superior Court (Pa.)—Dated Sept. 10, 1992

SUPERIOR COURT OF THE COMMONWEALTH OF PENNSYLVANIA

Miscellaneous Docket No. ____

J. NEVIN WHITE,

Applicant

v.

THE HONORABLE GEORGE E. HOFFER, (Judge of the Court of Common Pleas) (Commonwealth of Pennsylvania)

Respondent

APPLICATION FOR EMERGENCY STAY PENDING CONSIDERATION OF "PETITION FOR EXTRAORDINARY WRIT OF PROHIBITION" FILED AUGUST 26, 1992

J. NEVIN WHITE
Applicant, Pro Se
P. O. Box 99
Duncannon, PA 17020
(717) 834-4242

IN THE

SUPERIOR COURT OF THE COMMONWEALTH OF PENNSYLVANIA

J. NEVIN WHITE,

Applicant, Pro Se

v.

THE HON. GEORGE E. HOFFER, (Judge of the Court of Common Pleas for the Commonwealth of Pennsylvania)

Respondent

Miscellaneous Docket No.

APPLICATION FOR EMERGENCY STAY PENDING CONSIDERATION OF "PETITION FOR EXTRAORDINARY WRIT OF PROHIBITION" FILED AUGUST 26, 1992

TO THE SUPERIOR COURT OF THE COMMONWEALTH OF PENNSYLVANIA:

I, J. Nevin White, the abovenamed Applicant Pro Se, do hereby make application to this Honorable Court for an Emergency Stay pending consideration of a Petition For Extraordinary Writ of Prohibition filed on August 26, 1992.

1. Contained in the aforementioned Writ, filed on the 26th day of August, 1992, this Applicant Pro Se made request of this Honorable Court that the aforementioned Respondent Judge be stayed forthwith from making any orders or conducting any further proceedings in the matter entitled "White v. White" (4730 Civil 1981, Cumberland County Court of Common Pleas).

2. On the 27th day of August, 1992, the said Respondent Judge issued an order, a copy of which is attached herewith as Applicant's "Exhibit 1", requiring my attendance on Monday, September 14, 1992 at 9:00 A.M. for the purpose of determining the issue of my alleged contempt.

3. Prior to the said hearing, my counsel had filed a motion to have the Respondent Judge recuse himself since both the said Judge and counsel for Willa E. White, Richard C. Snelbaker, have been named as defendants in a federal action filed on the 24th day of August, 1992 in the Middle District of Pennsylvania.

4. On Wednesday, the 9th of September, 1992, my counsel, Benjamin V. R. Conlon, Esq. faxed to Judge Sheely, President Judge for the Court of Common Pleas in Cumberland County a letter with attachments (Applicant's "Exhibit 2"), the contents of which I respectfully refer to this Honorable Court.

5. Judge Sheely's response is hereby exhibited as Applicant's "Exhibit 3" and referred to this Court.

6. In light of the matters contained in my application for a writ of prohibition and the federal suit naming the Respondent Judge as a defendant, it is my concern that Judge Hoffer's conduct will be extremely hostile towards me. I verily believe that until the pending application for a Writ of Prohibition is determined, Judge Hoffer intends to ignore his obligation as a judge to act impartially.

WHEREFORE, my instant application is made in this expedited manner to request an immediate stay of the proposed hearing of Monday, September 14, 1992 pending the determination of the application for Writ of Prohibition.

Dated this 10th day of September, 1992.

Respectfully submitted,

J. NEVIN WHITE
(Applicant, Pro Se)
P. O. Box 99
Duncannon, PA 17020
(717) 834-4242

Sworn to and subscribed before me this
10th day of September, 1992.
KENNETH ELLENBERGER, JR, Notary Public
Duncannon, PA Perry County
My commission expires June 27, 1994

Appendix U—Order of Judge Hoffer for Bench Warrant Dated September 14, 1992

IN THE

COURT OF COMMON PLEAS OF CUMBERLAND COUNTY, PENNSYLVANIA

WILLA E. WHITE,

Plaintiff/Appellee

vs.

J. NEVIN WHITE,

Defendant/Appellant

CIVIL ACTION—LAW
4730 CIVIL 1981

IN RE: BENCH WARRANT

ORDER OF COURT

AND NOW, September 14, 1992, 9:15 a.m., J. Nevin White, having failed to appear in court as directed, and no reason having been given to the court for the defendant's nonappearance, it is

hereby ordered and directed that a Bench Warrant shall issue for the defendant's arrest.

By the Court,
GEORGE E. HOFFER, J.

RICHARD C. SNELBAKER, ESQUIRE
For the Plaintiff

BENJAMIN V.R. CONLON, ESQUIRE
For the Defendant

JERRY A. PHILPOTT, ESQUIRE
For the Defendant

Sheriff

:mtf

TRUE COPY FROM RECORD

In Testimony whereof, I here unto set my hand and the seal of said Court at Carlisle, Pa. This 30th day of Sept., 1992.

ELIZABETH A. WALTERS
Deputy Prothonotary